

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant : Koji SATO, et al.  
Application No. 08/750,641  
Filing Date : 16 December 1996  
Title : SCHEDULE SETTING AND PROCESSING SYSTEM  
Art Unit : Office of Petitions  
Examiner : L. Walsh

**Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450**

**DECLARATION OF  
JOHN C. ALTMILLER**

I, the undersigned, John C. Altmiller, make this declaration in support of the Renewed Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR § 1.137(b) for the above identified application.

1. Since about August 2007, I have been retired from the active practice of patent law. My current home address is 1908 Ballycor Drive, Vienna, VA 22182.

2. From about 1986 to July 31, 2007, I served as a partner of Kenyon & Kenyon LLC ("Kenyon") in Kenyon's Washington, DC offices. Prior to that time, I worked in Kenyon's New York office.

3. During my employment and tenure as a partner at Kenyon, I had numerous responsibilities, including prosecuting patent applications for Toyota Jidosha Kabushiki Kaisha ("Toyota"), the assignee of U.S. Patent Application Serial No. 08/750,641 ("641").

4. To my recollection, from at least 1995 to about July 2007, I was docketed as a supervising attorney/partner for many patent applications for Toyota. During this time I supervised several associates who assisted me with Toyota prosecution matters, including, Sterlon Mason, Mark H. Neblett, and William E. Curry.

5. It is my understanding that a Continuing Prosecution Application (“CPA”) for ‘641 was filed with the USPTO on March 15, 2000.

6. It is my understanding that a Preliminary Amendment for ‘641 was filed with the USPTO on March 29, 2000.

7. It is my understanding that a Notice of Allowance and an Issue Fee Transmittal form for ‘641 was mailed to a prior address of Kenyon’s Washington, DC office on April 17, 2000.

8. It is my understanding that an “Issue Fee Transmittal” form is present in the USPTO’s file wrapper for ‘641 and that this form remains blank (uncompleted). The form is stamped “MATCH & RETURN” and further stamped “RECEIVED APR 27 2000 TC 3600 MAIL ROOM.”

9. Based on the above information, as well as my recollection regarding the prosecution of Toyota cases, it is my conclusion that the Notice of Allowance for ‘641 was not received by Kenyon & Kenyon, but rather, was returned to the USPTO as undeliverable.

10. I did not know of the Notice of Allowance for ‘641 until contacted in 2008 by Shawn O’Dowd, who is currently a partner at Kenyon.

11. It is my understanding that a Notice of Abandonment was mailed to a prior address of Kenyon’s Washington, DC office on September 13, 2000.

12. Based on the above information, as well as my recollection regarding the prosecution of Toyota cases, it is my conclusion that the Notice of Abandonment for ‘641 was not received by Kenyon & Kenyon.

13. I did not know of the Notice of Abandonment for ‘641 until contacted in 2008 by Shawn W. O’Dowd.

14. According to a document in Kenyon’s paper files, I signed a change of correspondence address form for ‘641 on October 2, 2000, and that this form was stamped as received by the USPTO on October 3, 2000. I have no specific recollection relating to the signing or filing of this document. This document is attached as Exhibit 1 to this declaration.

15. Based on the above information, as well as my recollection regarding the prosecution of Toyota cases, it is my conclusion that the form was prepared for my signature by Cathy Ryan, a patent secretary at Kenyon who was then tasked with the responsibility of changing addresses for many of the cases then prosecuted by Kenyon. I have no specific recollection relating to this form.

16. According to documents in Kenyon's paper files, two other Kenyon attorneys filed documents with the USPTO relating to the correspondence address and power of attorney for the '641 application. These documents, as well as a communication relating to the filing of the documents, are attached as Exhibit 2 to this declaration. I have no specific recollection relating to these documents or the communication.

17. It is my understanding that the USPTO's paper file for '641 was officially "reported lost in USPTO" on November 27, 2000 ("11/27<sup>th</sup> [sic]"). Memoranda from Cathy Ryan, dated "1/12/00 [sic]" documenting this November 27<sup>th</sup> date is attached as Exhibit 3 to this declaration.

18. It is my understanding that I signed a "POWER TO INSPECT AND MAKE COPIES" of the '641 file on February 7, 2001. I have no specific recollection relating to the signing or filing of this document. This document is attached as Exhibit 4 to this declaration.

19. It is my understanding that Mark H. Neblett filed a File Reconstruction request which was stamped as received by "Licensing & Review" on March 23, 2001. This document is attached as Exhibit 5 to this declaration.

20. Based on the above information, as well as my recollection regarding the prosecution of Toyota cases, it is my conclusion that the USPTO informed us that the file for '641 had been lost, that we filed a request for reconstruction of the '641 file, and then awaited a USPTO response.

21. It is my understanding that an electronic docket entry entitled "PTO lost file-awaiting OA" was entered into Kenyon's electronic docketing system on July 15, 2002." Evidence of the docket entry is attached as Exhibit 6 to this declaration.

22. It is my understanding that I signed a document entitled "STATUS INQUIRY" on September 8, 2003. I have no specific recollection relating to the signing or filing of this document. The document "respectfully request[s] that the Examiner inform Applicants of the status of ['641]." The paper further indicates that "The U.S. Patent and Trademark Office notified Applicants that the subject file had been lost and, accordingly, Applicants filed a copy of the relevant documents forming the file history in a File Reconstruction on March 23, 2001." The paper also authorized the Commissioner to "charge any fee relevant to this filing to Kenyon & Kenyon Deposit Account No. 11-0600." The paper has Kenyon & Kenyon's 1500 K Street, N.W. address at the bottom of the page. This document is attached as Exhibit 7 to this declaration.

23. Based on the above information, as well as my recollection regarding the prosecution of Toyota cases, it is my conclusion that a review of my pending cases, which revealed the "PTO lost file" entry, prompted the filing of the Status Inquiry of September 8, 2003.


24. During my employment at Kenyon, neither the USPTO nor anyone at Kenyon advised me that '641 had been abandoned.

25. During my employment at Kenyon, neither the client nor anyone at Kenyon requested me to allow '641 to become abandoned.

26. After leaving my employment at Kenyon, I have not been involved in prosecution of, or been provided information regarding '641, until being recently advised of the present Petition.

I declare that all of the above statements made based on my own knowledge are true and that all of the above statements that were made on information and belief are believed to be true, and further declare that these statements are made with the knowledge that knowing, willful and materially false statements, as are defined under Section 1001 of Title 18 of the United States Code, are punishable by fine, imprisonment, or both under Section 1001, and that such statements may affect the validity of the any patent issuing from '641 if the application is revived.

Dated: 9 December 2008

  
John C. Altmiller

# EXHIBIT 1 TO ALTMILLER DECLARATION

17

Please type a plus sign (+) inside this box → ☐


PTO/SB/122 (11-95)  
Approved for use through 6/30/99. OMB 0651-0035  
Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

<b>CHANGE OF CORRESPONDENCE ADDRESS</b> <i>Application</i>  Address to: Assistant Commissioner for Patents Washington, D.C. 20231	Application Number	08/750,641
	Filing Date	12/16/96
	First Named Inventor	Sato
	Group Art Unit	2316
	Examiner Name	
	Attorney Docket Number	77792/23

Yoyota / Yoshida

Please change the Correspondence Address for the above-identified application to:

☒ Customer Number  →   
 Type Customer Number here

OR

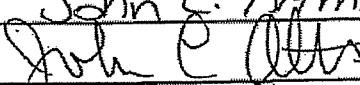
☐ Firm or Individual Name

Address			
Address			
City	State	ZIP	
Country			
Telephone	Fax		

This form cannot be used to change the data associated with a Customer Number. To change the data associated with an existing Customer Number use "Request for Customer Number Data Change" (PTO/SB/124).

I am the :

- ☐ Applicant.
- ☐ Assignee of record of the entire interest.  
Certificate under 37 CFR 3.73(b) is enclosed.
- ☒ Attorney or agent of record.

Typed or Printed Name	John C. Alt Miller
Signature	
Date	10/2/00

Burden Hour Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

## EXHIBIT 2 TO ALTMILLER DECLARATION

PATENT  
Docket No. 77792/23

### IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANTS : Koji SATO, et al.  
SERIAL NO. : 08/750,641  
FILED : December 16, 1996  
FOR : SCHEDULE SETTING AND PROCESSING SYSTEM  
GROUP ART UNIT : 2316  
EXAMINER : O. Hernandez

Assistant Commissioner for Patents  
Washington D.C. 20231

### CHANGE OF CORRESPONDENCE ADDRESS

S I R:

Notice is hereby given that the correspondence address in the above-identified application has changed. Please address all future communications regarding this application to:

John C. Altmiller  
KENYON & KENYON  
1500 K Street, N.W.  
Washington, D.C. 20006

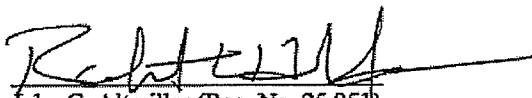
This address change is effective immediately. Thank you.

Respectfully submitted,

KENYON & KENYON

Dated: October 30, 2000

KENYON & KENYON  
1500 K Street, N.W., Suite 700  
Washington, DC 20005  
(202) 220-4200  
(202) 220-4201 (fax)

  
John C. Altmiller (Reg. No. 25,951)  
Robert L. Hails, Jr. (Reg. No. 39,702)



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PATENT  
Docket No.: 77792/23

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT :  
SERIAL NO. : 08/750641  
FILING DATE : December 16, 1996  
FOR : SCHEDULE SETTING AND PROCESSING SYSTEM

Commissioner of Patents and Trademarks  
Washington D.C. 20231

ASSOCIATE POWER OF ATTORNEY

Sir:

Please recognize John C. Altmiller, (Reg. No. 25,951) and other registered practitioners of Kenyon & Kenyon included in the Customer Number provided below, with full power to prosecute said application, to make alterations and amendments therein, and to transact all business in the Patent and Trademark Office connected therewith.

CUSTOMER NUMBER: 23838

Respectfully submitted,

Date November 6, 2000

Edward W. Greason  
Edward W. Greason  
Reg. No. 18,918

KENYON & KENYON  
One Broadway  
New York, NY 10004  
(212) 425-7200 (telephone)

Insera, Barbara

From: Neblett, Mark  
Sent: Wednesday, November 01, 2000 10:14 AM  
To: JCAKK@cs.com; Greason, Edward  
Cc: Halls, Robert  
Subject: FW: Toyota 77792/23

*Julie*  
*DC*

*Toyota/Yashida*  
*(app)*

In response to John Atmiller's questions, below:

The 1025 Conn. address was the only one in the file (although 1500 K was on correspondence Sterling Mason sent to the PTO in March 2000). Bob Halls filed the formal address change to 1500 K on Monday.

Mark H. Neblett  
KENYON & KENYON  
1500 K Street, N.W.  
Washington, DC 20005  
(202) 220-4200  
(202) 220-4201 (facsimile)  
(202) 220-4232 (direct)  
mneblett@kenyon.com

NOTE: The information in this e-mail message is confidential and intended only for the use of the intended recipient. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by e-mail, and destroy the original message. Thank you.

-----Original Message-----  
From: Halls, Robert  
Sent: Wednesday, November 01, 2000 8:20 AM  
To: Neblett, Mark  
Subject: FW: Toyota 77792/23

Mark,

I got the following from JCA.

Bob

-----Original Message-----  
From: JCAKK@cs.com [mailto:JCAKK@cs.com]  
Sent: Tuesday, October 31, 2000 12:23 PM  
To: RHalls@kenyon.com  
Subject: Re: Toyota 77792/23

Let Mark Neblett know. Was there a DC correspondence address for sure? Also let EWG know.



## EXHIBIT 3 TO ALTMILLER DECLARATION

CATHY RYAN  
KENYON & KENYON

1200 K STREET, N.W., SUITE 700  
WASHINGTON, D.C. 20005-1257  
PHONE 1202 333-4250

DIRECT 202 333-4250  
FAX 202 333-4251  
E-MAIL: cryan@kenyon.com

1/12/00

Conversation w/ Group receptionist  
File has been reported lost  
in USPTO (11/27th) The  
last known destination  
for this file was the  
file repository. There  
is no record of  
anyone ordering this  
file. I recommend contacting  
the Examiner to see if  
they need our file to  
rebuild the lost one.

**CATHY RYAN**  
**KENYON & KENYON**

1800 K STREET, N.W., SUITE 300  
WASHINGTON, D.C. 20005-1257  
PHONE (202) 222-4250

INVESTIGATOR: (202) 222-4250  
FAX: (202) 222-4251  
E-MAIL: cky@kenyon.com

1/12/01 10:45  
Left message w/ O.  
Hernandez

Power to  
Inspect

11:45  
Premier called  
to discuss  
the  
situation  
at 10:30  
6:00

# EXHIBIT 4 TO ALTMILLER DECLARATION

LAST 1/16/01

PATENT  
Docket No. 77792/23

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventors : Koji SATO et al.  
Serial No. : 08/750,641  
Filed : December 16, 1996  
For : SCHEDULE SETTING AND PROCESSING SYSTEM  
Examiner : O. Hernández

Assistant Commissioner of Patents  
Washington D.C. 20231

## POWER TO INSPECT AND MAKE COPIES


SIR:

Denise English and Jay Johnson are hereby authorized to inspect and copy the file for the above-captioned matter.

Respectfully submitted,

KENYON & KENYON

Date: 2/7/01, 2001

  
John C. Altmiller, Registration No. 25,951  
KENYON & KENYON  
1500 K Street, N.W., Suite 700  
Washington, D.C. 20005  
Telephone: (202) 220-4200  
Facsimile: (202) 220-4201

## EXHIBIT 5 TO ALTMILLER DECLARATION

PATENT  
Docket No.: 77792/23

### IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT : Koji SATO, et al.  
SERIAL NO. : 08/750,641  
FILING DATE : December 16, 1996  
FOR : SCHEDULE SETTING AND PROCESSING SYSTEM  
GROUP ART UNIT : 2316  
EXAMINER : O. HERNANDEZ

Assistant Commissioner for Patents  
Washington, D.C. 20231

### FILE RECONSTRUCTION

SIR:

We have been informed by the Office that the U.S. Patent and Trademark Office's file for the above-referenced case has been lost. Please find attached a copy of the relevant documents forming the file history for this application from the applicant's files for use in reconstructing the Office's file.

Please reconstruct the file. Thank you for your attention to this matter. Please contact the undersigned at 202-220-4232, for any questions.

Respectfully submitted,



Mark H. Neblett  
Reg. No. 42,028

# EXHIBIT 6 TO ALTMILLER DECLARATION

IP556001  
Kenyon & Kenyon

## Patent Jacket Data Sheet

Toyota YK  
77792/23

S. O'DOWD  
DANIEL G. SHANLEY

P25830 USW

I. SCHEUGENPFLUG

Client Ref

Office DC

Title SCHEDULE SETTING AND PROCESSING SYSTEM

Prosecution Particulars				Parties	
Prosecution Status	Live - Pending			Applicant/Regd.	TOYOTA JIDOSHA KABUS
Priority Claimed	6-298290	01-Dec-1994	Japan	Inventor	KIZU, Masafumi
Parent	PCT/JP95/02439	01-Dec-1995	WO	Inventor	MORITA, Makoto
Application	08/750641	01-Dec-1995	US [PCT]	Inventor	SATO, Koji
Filed on		15-Dec-1995		Inventor	YAMASHITA, Masanobu
Publication				Recd/Frame	5387 / 229
Allowed					
Grant Fees Paid					
Grant					
Expiry					
Agent	KENYON N.Y.				
Renewal Particulars					
Renewal Status	Pre-Grant				
Annuity					
Next Due					
Next Cost					
Cost Rest of Life					
Comm Date	Communication / Action		Due Date	Last Date	Response Filed
16-Dec-1995	30 MONTH NATIONAL PHASE APPLIC		16-Dec-1995	16-Dec-1995	16-Dec-1995
16-Dec-1995	IDS Due		16-Dec-1995	16-Dec-1995	16-Dec-1995
16-Dec-1995	Preliminary Amendment		16-Dec-1995	16-Dec-1995	16-Dec-1995
16-Dec-1995	Recordal		16-Dec-1995	16-Dec-1995	16-Dec-1995
14-Feb-1997	NOTICE OF ACCEPTANCE OF APPLIC				
14-Mar-1997	Filing Receipt				
18-Mar-1997	IDS - suppl IDS		18-Mar-1997	18-Mar-1997	18-Mar-1997
07-May-1997	Recordal		07-May-1997	07-May-1997	07-May-1997
02-Jun-1997	IDS - suppl IDS		02-Jun-1997	02-Jun-1997	02-Jun-1997
27-Jun-1997	IDS - suppl IDS		27-Jun-1997	27-Jun-1997	27-Jun-1997
04-Sep-1998	IDS - suppl IDS		04-Sep-1998	04-Sep-1998	04-Sep-1998
17-Mar-1999	IDS - suppl IDS		17-Mar-1999	17-Mar-1999	17-Mar-1999
12-Oct-1999	Ext of Time Requested		12-Oct-1999	12-Oct-1999	12-Oct-1999
09-Jun-1999	Respond to Official Action		09-Nov-1999	09-Nov-1999	12-Oct-1999
23-Nov-1999	R115 Response to Final Due		23-Jan-2000	23-Jan-2000	23-Feb-2000
23-Nov-1999	Notice of Appeal Due		23-Feb-2000	23-May-2000	15-Mar-2000
	CPA Appl'n. Filed		15-Mar-2000	15-Mar-2000	15-Mar-2000
	Suppl. Info. Disc. State.		15-Mar-2000	15-Mar-2000	15-Mar-2000
08-Sep-2003	Status Inquiry		08-Sep-2003	08-Sep-2003	08-Sep-2003
	File IDS per 11/13/03 agent let		05-Dec-2003	05-Dec-2003	18-Nov-2003
09-Sep-2004	Supplemental IDS Filed		09-Sep-2004	09-Sep-2004	09-Sep-2004
15-Sep-2004	Letter to PTO		15-Sep-2004	15-Sep-2004	15-Sep-2004
08-Aug-2008	Petition Filed		05-Aug-2008	06-Aug-2008	05-Aug-2008
08-Aug-2008	Request Continued Examination		05-Aug-2008	06-Aug-2008	06-Aug-2008
	Advisory Action Received		29-Feb-2000	29-Feb-2000	
	PTO lost file-swallowing OA		15-Jul-2002	15-Jul-2002	
12-Sep-2008	Decision on Petition - Dismissal			12-Sep-2008	

Updated 22/09/2008 Updated Printed: 15 Sep 2008

PG01 Patent Data Sheet

77792/23

Page 1 of 2

## EXHIBIT 7 TO ALTMILLER DECLARATION

PATENT  
DOCKET NO.: 77792/23

### IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT(S): Koji SATO et al.  
SERIAL NO.: 08/750,641  
FILED: December 16, 1996  
FOR: SCHEDULE SETTING AND PROCESSING SYSTEM  
ART UNIT: 2316 EXAMINER: O. Hernandez

COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, VA 22313-1450

### STATUS INQUIRY

SIR:


Applicants for the above-cited U.S. application respectfully request that the Examiner inform Applicants of the status of the application. Applicants filed the application on December 16, 1996 and received an official Filing Receipt on March 14, 1997.

The U.S. Patent and Trademark Office notified Applicants that the subject file had been lost and, accordingly, Applicants filed a copy of the relevant documents forming the file history in a File Reconstruction on March 23, 2001.

The Commissioner is authorized to charge any fee relevant to this filing to Kenyon & Kenyon Deposit Account No. 11-0600. A duplicate of this sheet is attached.

Respectfully submitted,

Date: September 8, 2003

  
John C. Altmiller  
(Reg. No. 25,951)

KENYON & KENYON  
1500 K Street, N.W., Suite 700  
Washington, DC 20005  
Tel: (202) 429-1776  
Fax: (202) 429-0796

The stamp of the Patent Office hereon may be taken as acknowledging the receipt, on the date stamped, of:

INVENTOR(S): Koji SATO et al.  
SERIAL NO.: 08750,641  
FILED: December 16, 1995  
TITLE: SCHEDULE SETTING AND PROCESSING SYSTEM  
GROUP ART: 2316  
EXAMINER: O. Hernandez

PAPERS FILED:

I. Status Inquiry

JCA/lnq

September 8, 2003



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant : Koji SATO, et al.  
Application No. 08/750,641  
Filing Date : 16 December 1996  
Title : SCHEDULE SETTING AND PROCESSING SYSTEM  
Art Unit : Office of Petitions  
Examiner : L. Walsh

**Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450**

**DECLARATION OF  
MARK H. NEBLETT**

I, the undersigned, Mark H. Neblett (Reg. No. 42,028), make this declaration in support of the Renewed Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR § 1.137(b) for the above identified application.

1. Since about September 2003, I have been an employee of the law firm of Crowell & Moring LLP in Washington, DC. During this period, I have served as counsel, specializing in preparing and prosecuting patent applications.

2. From about March 31, 1999 to July 31, 2003, I was an employee of Kenyon & Kenyon ("Kenyon") in Washington, DC. During this period, I served as an associate.

3. During my employment at Kenyon, I was responsible for prosecuting patent applications in the mechanical and electrical arts, including prosecuting patent applications for Toyota Jidosha Kabushiki Kaisha, the assignee of U.S. Patent Application Serial No. 08/750,641 ("641").

4. Prior to March 22, 2001, to my recollection, Kenyon was contacted by the United States Patent and Trademark Office (the "Office") and informed that the Office had lost the file for U.S. Patent Application Serial No. 08/750,641. I was asked to provide a copy of the Kenyon file for this application to the USPTO, and was told that this copy would be used by the USPTO to reconstruct the official file.



5. Attached as Exhibit 1 to this Declaration is a copy of a letter I signed enclosing a copy of Kenyon's file for United States Patent Application No. 08/750,641. In that letter Kenyon asked that the file be reconstructed at the USPTO.

6. I directed my assistant to prepare Exhibit 1 and its attached application file, and directed my assistant to file Exhibit 1 with the USPTO.

7. Exhibit 2 to this declaration is a photocopy of a return date-stamped postcard received from the USPTO indicating the receipt of Exhibit 1 by the USPTO.

8. During my employment at Kenyon, I do not know of a case where I requested the USPTO to reconstruct an application file after that application was known by me to be abandoned.

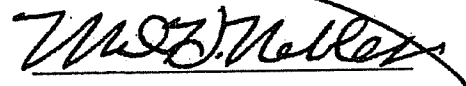
9. During my employment at Kenyon, neither the USPTO nor anyone at Kenyon advised me that '641 had been abandoned.

10. During my employment at Kenyon, neither the client nor anyone at Kenyon requested me to allow '641 to become abandoned.

11. After leaving my employment at Kenyon, I have not been involved in prosecution of, or been provided information regarding, the '641 application, until being recently advised of the present Petition.

I declare that all of the above statements made based on my own knowledge are true and that all of the above statements that were made on information and belief are believed to be true, and further declare that these statements are made with the knowledge that knowing, willful and materially false statements, as are defined under Section 1001 of Title 18 of the United States Code, are punishable by fine, imprisonment, or both under Section 1001, and that such statements may affect the validity of the any patent issuing from '641 if the application is revived.

Dated: 12/4/08



Mark H. Neblett

## EXHIBIT 1 TO NEBLETT DECLARATION

PATENT  
Docket No.: 77792/23

### IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT : Koji SATO, et al.  
SERIAL NO. : 08/750,641  
FILING DATE : December 16, 1996  
FOR : SCHEDULE SETTING AND PROCESSING SYSTEM  
GROUP ART UNIT : 2316  
EXAMINER : O. HERNANDEZ

Assistant Commissioner for Patents  
Washington, D.C. 20231

### FILE RECONSTRUCTION

SIR:

We have been informed by the Office that the U.S. Patent and Trademark Office's file for the above-referenced case has been lost. Please find attached a copy of the relevant documents forming the file history for this application from the applicant's files for use in reconstructing the Office's file.

Please reconstruct the file. Thank you for your attention to this matter. Please contact the undersigned at 202-220-4232, for any questions.

Respectfully submitted,



Mark H. Neblett  
Reg. No. 42,028

## EXHIBIT 2 TO NEBLETT DECLARATION

The stamp of the Patent Office hereon may be taken as acknowledging the receipt, on the date stamped, of

APPLICANTS: Koji SATO, et al.  
SERIAL NO.: 08/750,641  
FILED: December, 16, 1996  
FOR: *SCHEDULE SETTING AND PROCESSING  
SYSTEM*  
GROUP ART UNIT: 2316

### PAPERS FILED:

1. File Reconstruction

MHN/cct

77792/23

3/22/0

1

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant : Koji SATO, et al.  
Application No. 08/750,641  
Filing Date : 16 December 1996  
Title : SCHEDULE SETTING AND PROCESSING SYSTEM  
Art Unit : Office of Petitions  
Examiner : L. Walsh

**Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450**

**DECLARATION OF  
JUDITH M. RUSSO**

I, the undersigned, Judith M. Russo, make this declaration in support of the Renewed Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR § 1.137(b) for the above identified application.

1. From about November 6, 2002, I have been an employee of Kenyon & Kenyon LLP ("Kenyon") in Kenyon's Washington, DC office. My current title is Intellectual Property Support Coordinator.

2. I currently supervise the operation of Kenyon's computerized docketing system for Kenyon's Washington DC office. I am one of over a dozen employees in Kenyon's docketing department.

3. On July 10, 2008, to my recollection, I was consulted by Ingrid Hodge regarding the possible abandoned status of U.S. Patent Application Serial No. 08/750,641 ("641").

4. I have examined the docketing records for '641, and see no evidence that Kenyon received a paper or communication prior to July 2008 indicating that '641 was abandoned. A copy of the docketing report for '641 as of September 15, 2008 is attached as Exhibit 1 to this declaration.

5. As of July 10, 2008, Kenyon's electronic docketing system listed '641 as a pending application and as "PTO lost file-awaiting OA," where "OA" means "Office Action." Kenyon's electronic docketing system indicates that the "PTO lost file-awaiting OA" status was entered into the system on July 15, 2002.

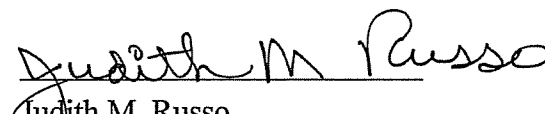
6. A "PTO lost file-awaiting OA" status would appear on various docketing reports, but such a status would not directly prompt the need for action by a prosecuting attorney, as such status makes it clear that Kenyon is awaiting an Office Action from the USPTO.

7. Prior to July 10, 2008, neither the USPTO, nor anyone at Kenyon advised me that '641 had been abandoned.

8. To my knowledge and belief, the entire delay in filing the required reply for '641 from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

I declare that all of the above statements made based on my own knowledge are true and that all of the above statements that were made on information and belief are believed to be true, and further declare that these statements are made with the knowledge that knowing, willful and materially false statements, as are defined under Section 1001 of Title 18 of the United States Code, are punishable by fine, imprisonment, or both under Section 1001, and that such statements may affect the validity of the any patent issuing from '641 if the application is revived.

Dated: 12-10-08

  
Judith M. Russo

# EXHIBIT 1 TO RUSSO DECLARATION

IPSSdotNet  
Kenyon & Kenyon

## Patent Jacket Data Sheet

Toyota/YKI  
7792/23

S. O'DOWD  
DANIEL G. SHANLEY

P25830 USW  
Client Ref  
Office DC

I. SCHEUGENPFLUG

Title SCHEDULE SETTING AND PROCESSING SYSTEM

Prosecution Particulars			Parties	
Prosecution Status	Live - Pending		Applicant/Regd.	TOYOTA JIDOSHA KABUS
Priority Claimed	6-298290	01-Dec-1994 Japan	Inventor	KIZU, Masafumi
Parent	PCT/JP95/02459	01-Dec-1995 WO	Inventor	MORITA, Makoto
Application	08/750641	01-Dec-1995 US [PCT]	Inventor	SATO, Koji
Filed on		16-Dec-1996	Inventor	YAMASHITA, Masanobu
Publication			Reel/Frame	6387 / 229
Allowed				
Grant Fees Paid				
Grant				
Expiry				
Agent	KENYON N.Y.			
Renewal Particulars				
Renewal Status	Pre-Grant			
Annuity				
Next Due				
Next Cost				
Cost Rest of Life				

Comm Date	Communication / Action	Due Date	Last Date	Response Filed
16-Dec-1996	30 MONTH NATIONAL PHASE APPLIC	16-Dec-1996	16-Dec-1996	16-Dec-1996
16-Dec-1996	IDS Due	16-Dec-1996	16-Dec-1996	16-Dec-1996
16-Dec-1996	Preliminary Amendment	16-Dec-1996	16-Dec-1996	16-Dec-1996
16-Dec-1996	Recordal	16-Dec-1996	16-Dec-1996	16-Dec-1996
14-Feb-1997	NOTICE OF ACCEPTANCE OF APPLIC			
14-Mar-1997	Filing Receipt			
18-Mar-1997	IDS - suppl IDS	18-Mar-1997	18-Mar-1997	18-Mar-1997
07-May-1997	Recordal	07-May-1997	07-May-1997	07-May-1997
02-Jun-1997	IDS - suppl IDS	02-Jun-1997	02-Jun-1997	02-Jun-1997
27-Jun-1997	IDS - suppl IDS	27-Jun-1997	27-Jun-1997	27-Jun-1997
04-Sep-1998	IDS - suppl IDS	04-Sep-1998	04-Sep-1998	04-Sep-1998
17-Mar-1999	IDS - suppl IDS	17-Mar-1999	17-Mar-1999	17-Mar-1999
12-Oct-1999	Ext of Time Requested	12-Oct-1999	12-Oct-1999	12-Oct-1999
09-Jun-1999	Respond to Official Action	09-Nov-1999	09-Nov-1999	12-Oct-1999
23-Nov-1999	R116 Response to Final Due	23-Jan-2000	23-Jan-2000	23-Feb-2000
23-Nov-1999	Notice of Appeal Due	23-Feb-2000	23-May-2000	15-Mar-2000
	CPA Appl'n. Filed	15-Mar-2000	15-Mar-2000	15-Mar-2000
	Suppl. Info. Disc. State.	15-Mar-2000	15-Mar-2000	15-Mar-2000
08-Sep-2003	Status Inquiry	08-Sep-2003	08-Sep-2003	08-Sep-2003
	File IDS per 11/13/03 agent let	05-Dec-2003	05-Dec-2003	18-Nov-2003
09-Sep-2004	Supplemental IDS Filed	09-Sep-2004	09-Sep-2004	09-Sep-2004
15-Sep-2004	Letter to PTO	15-Sep-2004	15-Sep-2004	15-Sep-2004
06-Aug-2008	Petition Filed	06-Aug-2008	06-Aug-2008	06-Aug-2008
06-Aug-2008	Request Continued Examination	06-Aug-2008	06-Aug-2008	06-Aug-2008
	Advisory Action Received	29-Feb-2000	29-Feb-2000	
	PTO lost file-awaiting OA	15-Jul-2002	15-Jul-2002	
12-Sep-2008	Decision on Petition - Dismissed		12-Sep-2008	

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Kenyon & Kenyon

## Patent Jacket Data Sheet

10-Sep-2008 Response Re Petition due

10-Nov-2008 10-Mar-2009

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant : Koji SATO, et al.  
Application No. 08/750,641  
Filing Date : 16 December 1996  
Title : SCHEDULE SETTING AND PROCESSING SYSTEM  
Art Unit : Office of Petitions  
Examiner : L. Walsh

**Mail Stop Petition**  
**Commissioner for Patents**  
**P.O. Box 1450**  
**Alexandria, VA 22313-1450**

**DECLARATION OF**  
**SHAWN W. O'DOWD**

I, the undersigned, Shawn W. O'Dowd, make this declaration in support of the Renewed Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR § 1.137(b) ("Renewed Petition") for the above identified application.

1. Since about June 12, 1989, I have served as an employee and a partner of Kenyon & Kenyon LLP ("Kenyon") in Kenyon's Washington, DC and San Jose offices.

2. During my employment and tenure as a partner at Kenyon, I had numerous responsibilities, including prosecuting patent applications for Toyota Jidosha Kabushiki Kaisha ("Toyota"), the assignee of U.S. Patent Application Serial No. 08/750,641 ("641").

3. On or about July of 2007, I was docketed as a supervising partner for the '641 application. I was docketed as a supervising partner because of the retirement of a prior supervising attorney/partner, John C. Altmiller.

4. Prior to July of 2007, I had prosecuted and/or supervised the prosecution of numerous other Toyota prosecution matters.

5. On August 8, 2008, I filed a petition under 37 CFR 1.137(b) (the "Original Petition"), indicating that any delay in paying the issue fee in '641 was unintentional.



6. The USPTO mailed a Dismissal relating to the Original Petition on September 10, 2008.

7. I had several questions regarding the Dismissal, and attempted to contact Examiner Walsh regarding the same; however, Examiner Walsh was away from her usual examining functions for much of September and October (e.g., for extended training). On October 24, 2008, I was able to discuss the petition with Examiner Walsh.

8. My primary concern was the Examiner's many requirements relating to "all persons . . . having firsthand knowledge of the circumstances surrounding the protracted delay," such as the requirement for statements and "[c]opies of any correspondence relating to the filing, or to not filing a further reply to the outstanding Office action." (See Dismissal at 2-3.) After the discussion with Examiner Walsh on October 24, 2008 involving the facts and witnesses available to us at this time, Examiner Walsh indicated that especially in light of the fact that only the payment of an issue fee was at issue in this case, it would not be necessary at this time to go to extraordinary measures to get statements from all persons having firsthand knowledge of the circumstances surrounding the delay.

9. Nevertheless, I, as well as associates at Kenyon, have made extensive efforts in the preparation of the Renewed Petition. We have intensely examined the paper file wrapper of the '641 application to determine the identity of the various persons at Kenyon who worked on the prosecution of '641 application and to compile the many efforts by these Kenyon attorneys and staff to further prosecution of the '641 application. This investigation included contacting several former Kenyon employees, including, *inter alia*, an attorney who was no longer engaged in the active practice of patent law, and an attorney who worked for a law firm in Tokyo, Japan. Through contacting these former Kenyon employees, Applicants are able to provide further detail regarding the events which ultimately resulted in the delay in this case.

10. In October and November of 2008, I contacted Mark Neblett regarding '641. He had no specific information or knowledge relating to '641, the abandonment thereof, and the discovery of the same. However, as he could give some insight as to the circumstances surrounding the filing of the File Reconstruction request of March 23, 2001, Mr. Neblett has submitted a declaration in support of the Renewed Petition.

11. In October of 2008, I contacted John Altmiller, a Kenyon partner listed on the '641 declaration, regarding '641. He had no specific information or knowledge relating to '641, the abandonment thereof, and the discovery of the same. However, as he was a supervising attorney for the case until his retirement in or about March of 2007, Mr. Altmiller has submitted a declaration in support of the Renewed Petition.

12. In November of 2008, I contacted Sterlon Mason, a former prosecuting associate who resigned from Kenyon on or about July 21, 2000, regarding '641. He had no specific information or knowledge relating to '641, the abandonment thereof, and the discovery of the same.

13. In November of 2008, I contacted Frank Pietrantonio, a partner who resigned from Kenyon on or about May 1, 2000, regarding '641. He had no specific information or knowledge relating to '641, the abandonment thereof, and the discovery of the same. While his name was listed on the '641 declaration, Frank Pietrantonio indicated to me that he was not substantively involved with any Toyota prosecutions.

14. In November of 2008, I contacted Japanese counsel for Toyota regarding '641. Japanese counsel for Toyota reviewed their file history for '641 and confirmed that Toyota has always been desirous of obtaining a patent related to '641, and that no instructions had been received or given to cease prosecution of '641.

15. I have spoken with Daniel Shanley, a current Kenyon associate regarding '641. Prior to July 10, 2008, he had no specific information or knowledge relating to '641, the abandonment thereof, and the discovery of the same. Mr. Shanley has submitted a declaration in support of the Renewed Petition.

16. I have spoken with Ingrid Hodge, a current Kenyon employee regarding '641. Prior to July 10, 2008, she had no specific information or knowledge relating to '641, the abandonment thereof, and the discovery of the same. Ms. Hodge has submitted a declaration in support of the Renewed Petition.

17. I have spoken with Judith Russo, a current Kenyon employee regarding '641. Prior to July 10, 2008, she had no specific information or knowledge relating to '641, the

abandonment thereof, and the discovery of the same. Ms. Russo has submitted a declaration in support of the Renewed Petition.

18. Based on my review of a copy of USPTO's filewrapper for '641, the USPTO mailed an Advisory Action regarding '641 to Kenyon on February 29, 2000. The address on the cover page of the Advisory Action listed Kenyon's address as "1025 CONNECTICUT AVENUE NW." (Exh. 1.)

19. On February 29, 2000, the offices of Kenyon were no longer located at "1025 CONNECTICUT AVENUE NW" in Washington, DC. Less than one year prior to February 29, 2000, in March of 1999, Kenyon had moved its offices to 1500 K Street, NW, also in Washington DC.

20. As evidenced by an entry into Kenyon's computerized docketing system, the Advisory Action of February 29, 2000 was received by Kenyon. (Exh. 2.)

21. In response to the Advisory Action, Applicants filed a Continued Prosecution Application (CPA) with the USPTO on March 15, 2000, along with a fee of \$800. (Exh. 3.) The mailing of the CPA was entered into Kenyon's computerized docketing system. (Exh. 2.)

22. The Transmittal Form for the CPA filed March 15, 2000 listed "1500 K Street, N.W." as the address of Kenyon. (Exh. 3.)

23. Based on my review of a copy of Kenyon's filewrapper for '641, on March 29, 2000, Applicants filed a Preliminary Amendment with the USPTO via facsimile. (Exh. 4.) The Preliminary Amendment faxed to the USPTO on March 29, 2000 listed "1500 K Street, N.W." as the address of Kenyon. (Exh. 4.)

24. Based on my review of a copy of USPTO's filewrapper for '641, on April 17, 2000, the USPTO mailed a Notice of Allowability to Kenyon at "1025 CONNECTICUT AVENUE NW" in Washington, DC. The Notice of Allowability was "responsive to amendment filed 3/29/00." (Exh. 5.)

25. Prior to April 17, 2000, staff at Kenyon had been instructed to change the correspondence addresses of the many cases then prosecuted by Kenyon's Washington, DC office. However, by April 17, 2000, all cases had not yet been processed, including '641.

26. Based on my review of the docket report for '641 (Exh. 2), Kenyon did not receive the Notice of Allowability.

27. Based on my review of a copy of USPTO's filewrapper for '641, a copy of the "ISSUE FEE TRANSMITTAL" form is contained within the USPTO filewrapper for '641. The copy is not signed. Furthermore, the copy is stamped "MATCH & RETURN" and "RECEIVED APR 17 2000 TC 3600 MAILROOM." (Exh. 6.)

28. The Notice of Allowability indicates that an issue fee of \$1210 was due on July 17, 2000. (Exh. 5.)

29. Based on my review of the file wrapper and docket report for '641 (Exh. 2), there is no evidence that Kenyon paid or attempted to pay a \$1210 issue fee for '641.

30. Based on my review of a copy of USPTO's filewrapper for '641, on September 13, 2000, the USPTO mailed a Notice of Abandonment to Kenyon at "1025 CONNECTICUT AVENUE NW" in Washington, DC. The Notice of Abandonment was stamped with a message "ABANDONMENT CONTACT PERSON IS: TOM HAWKINS 305-8380." (Exh. 7.)

31. To my knowledge, there is no evidence in Kenyon files, nor in the '641 USPTO file wrapper that Tom Hawkins, or anyone else at the USPTO, attempted to contact Kenyon via telephone prior to mailing the Notice of Abandonment.

32. Based on my review of the docket report for '641 (Exh. 2), Kenyon did not receive the Notice of Abandonment.

33. Based on my review of a copy of Kenyon's filewrapper for '641, on October 2, 2000, John C. Altmiller (Reg. No. 25,951) of Kenyon signed a Change of Correspondence Address changing the correspondence address of '641 to that of customer number 23838. (Exh. 8.)

34. Based on my review of a copy of USPTO's filewrapper for '641, the Change of Correspondence Address was stamped as received by OIPE on October 3, 2000, as received by Technology Center 2800 on October 4, 2000, and as received by Technology Center 2700 on October 6, 2000. There is no other evidence in the '641 USPTO filewrapper that the Change of Correspondence Address signed October 2, 2000 was considered by the USPTO. (Exh. 9.)

35. Based on my review of a copy of Kenyon's filewrapper for '641, on October 30, 2000, Robert Hails (Reg. No. 39,702) of Kenyon transmitted by facsimile a second Change of Correspondence Address to Examiner Olga Hernandez. The second Change of Correspondence Address form indicated that future communications should be sent to John C. Altmiller of Kenyon at 1500 K Street, N.W. in Washington, DC. (Exh. 10.)

36. Based on my review of a copy of the USPTO's filewrapper for '641, the second Change of Correspondence Address was stamped as received by Group 3600 on October 30, 2000. This paper is marked as paper #19, initialed by DRS, and dated June 12 of an unknown year (the retrieved copy reads "6-12-0" – the final number appears to have been cut-off upon copying). (Exh. 11.)

37. Based on my review of a copy of Kenyon's filewrapper for '641, an Associate Power of Attorney appointing "John C. Altmiller (Reg. No. 25,951) and other registered practitioners of Kenyon included in [Customer Number 23858]" was stamped as received by the USPTO on December 11, 2000. The paper, which had Kenyon's New York office address at the bottom of the page, is dated November 6, 2000, and is signed by Edward W. Greason (Reg. No. 18,918). (Exh. 12.)

38. Based on my review of the '641 USPTO filewrapper, there is no evidence that the Associate Power of Attorney was considered by the USPTO.

39. Based on my review of a copy of Kenyon's filewrapper for '641, on January 12, 2001, Cathy Ryan at Kenyon learned from a "[c]onversation w/ group receptionist" that the USPTO file for '641 was reported lost on November 27, 2000, the last known destination for the file being "the file repository." Cathy Ryan also left a message with Examiner O. Hernandez at

10:45 AM. The Examiner called back at 2:45 "to verify that file is in Depository." A note written next to the record of the 10:45 message indicates "Power to Inspect." (Exh. 13.)

40. Based on my review of a copy of Kenyon's filewrapper for '641, a "POWER TO INSPECT AND MAKE COPIES" was signed by John C. Altmiller on February 7, 2001. A handwritten note on the top of the document indicates "LOST 1/16/01." A sticky note signed by "Cathy" attached to the document indicates "Denise/Jay to go over 2/8/01." (Exh. 14.)

41. Based on my review of a copy of Kenyon's filewrapper for '641, a File Reconstruction request was stamped as received by "Licensing & Review" on March 23, 2001. The paper indicates:

We have been informed by the Office that the U.S. Patent and Trademark Office's file for [08/750,641] has been lost. Please find attached a copy of the relevant documents forming the file history for this application from the applicant's files for use in reconstructing the Office's file.

Please reconstruct the file. Thank you for your attention to this matter. Please contact [Mark H. Neblett (Reg. No. 42,028)], for any questions.

The paper was signed by Mark H. Neblett. The postcard is dated March 22, 2001. (Exh. 15.)

42. Based on my review of a copy of USPTO's filewrapper for '641, there is no evidence that the File Reconstruction request was considered by the USPTO.

43. Based on my review of Kenyon's docketing records, on July 15, 2002, an entry was made into the electronic docketing system at Kenyon indicating "PTO lost file-awaiting OA." (Exh. 2.)

44. According to the Human Resources department of Kenyon, on July 31, 2003, Mark H. Neblett resigned from employment at Kenyon.

45. Based on my review of a copy of Kenyon's filewrapper for '641, a paper entitled "STATUS INQUIRY" signed by John C. Altmiller was filed with the USPTO. The paper, which is dated September 8, 2003, "respectfully request[s] that the Examiner inform Applicants of the status of the application." The paper further indicates that "The U.S. Patent and Trademark Office notified Applicants that the subject file had been lost and, accordingly, Applicants filed a copy of the relevant documents forming the file history in a File Reconstruction on March 23,

2001.” The paper also authorized the Commissioner to “charge any fee relevant to this filing to Kenyon & Kenyon Deposit Account No. 11-0600.” The paper has Kenyon’s 1500 K Street, N.W. address at the bottom of the page. (Exh. 16.)

46. A stamped postcard confirming the receipt of the Status Inquiry of September 8, 2003 is also present in Kenyon’s filewrapper for ‘641. (Exh. 17.)

47. Based on my review of a copy of USPTO’s filewrapper for ‘641, there is no evidence the Status Inquiry of September 8, 2003 was considered by the USPTO.

48. Based on my review of a copy of Kenyon’s filewrapper for ‘641, according to a postcard, an Information Disclosure Statement and accompanying papers was stamped as received by the USPTO (OIPE) on November 18, 2003. (Exh. 18.)

49. Based on my review of a copy of the USPTO’s filewrapper for ‘641, an Information Disclosure Statement (IDS) signed by William E. Curry (Reg. No. 43,572) and dated November 18, 2003 was filed by Kenyon. The IDS lists Kenyon’s 1500 K Street, N.W. address. The IDS is stamped as being received by Group 3600 on November 24, 2003. According to the IDS, as well as the cover of the ‘641 USPTO filewrapper, the IDS was designated as Paper #20. The IDS indicates that the designation of “#20” was given on February 13, 2004 (“2/13/4”). (Exh. 19.)

50. Based on my review of a copy of Kenyon’s filewrapper for ‘641, according to a postcard, an Information Disclosure Statement and accompanying papers was stamped as received by the USPTO (OIPE) on September 9, 2004. (Exh. 20.)

51. Based on my review of a copy of the USPTO’s filewrapper for ‘641, an Information Disclosure Statement (IDS) signed by William E. Curry (Reg. No. 43,572) and dated September 9, 2004 was filed by Kenyon. The IDS lists Kenyon’s 1500 K Street, N.W. address. The IDS is stamped as being received by Group 3600 on September 15, 2004. According to the IDS, as well as the cover of the ‘641 USPTO filewrapper, the IDS was designated as Paper #21. (Exh. 21.)

52. Based on my review of a copy of Kenyon's filewrapper for '641, a paper entitled "REQUEST FOR STATUS" signed by William E. Curry (Reg. No. 43,572) is present in Kenyon's paper files. The paper, which is dated September 15, 2004, indicated:

A request for continued prosecution with an Information Disclosure Statement was filed in this case on 15 March 2000. A preliminary amendment was faxed to the Examiner on 29 March 2000. A change of correspondence address was filed on 30 October 2000. Thereafter, a copy of the entire file was submitted for re-construction of the lost file on 23 March 2001. A status inquiry was filed on 8 September 2003. Information Disclosure Statements were filed on 18 November 2003 and 9 September 2004, respectively.

It is respectfully requested that the undersigned [William E. Curry] be informed when an Office Action or other communication from the Patent Office may be expected in this case.

The paper has Kenyon's 1500 K Street, N.W. address at the bottom of the page. A stamped postcard confirms that the USPTO received the paper on September 15, 2004. (Exh. 22.)

53. Based on my review of a copy of USPTO's filewrapper for '641, there is no evidence that the Request for Status of September 15, 2004 was considered by the USPTO.

54. According to Kenyon's Human Resources department, in January 2007, William E. Curry's employment ended at Kenyon.

55. According to Kenyon's human resources department, on July 31, 2007, John C. Altmiller resigned from employment at Kenyon.

56. Contemporaneous with John C. Altmiller's resignation, I was docketed as the attorney responsible for '641.

57. Based on my review of a copy of USPTO's filewrapper for '641, on June 27, 2008, Japanese patent counsel for Applicants' faxed a letter to Kenyon inquiring as to the status of '641. The communication was addressed to William E. Curry.

58. Based on my review of a copy of USPTO's filewrapper for '641, on July 10, 2008, Japanese patent counsel for Applicants' faxed a reminder communication to Kenyon.



59. I did not know or even suspect that the '641 patent was abandoned until on or after July 10, 2008. To my recollection, Daniel Shanley, informed me of the abandoned status of '641, after made an investigation into the status of '641.

60. On or about July 23, 2008, I took primary responsibility for filing a petition to revive with the USPTO.

61. Based on the above information, as well as my recollection regarding the prosecution of Toyota cases, it is my conclusion that the Notice of Allowance for '641 was not received by Kenyon, but rather, was returned to the USPTO as undeliverable.

62. Based on the above information, as well as my recollection regarding the prosecution of Toyota cases, it is my conclusion that the Notice of Abandonment for '641 was similarly not received by Kenyon.

63. I do not recall of a case during my employment at Kenyon where I requested the Office to reconstruct an application file after that application had been abandoned.

64. Prior to July 10, 2008, I do not recall the Office or anyone at Kenyon advising me that '641 had been abandoned.

65. I do not recall the client or anyone at Kenyon ever requesting me to allow '641 to become abandoned.

66. To my knowledge and belief, the entire delay in filing the required reply for '641 from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

I declare that all of the above statements made based on my own knowledge are true and that all of the above statements that were made on information and belief are believed to be true, and further declare that these statements are made with the knowledge that knowing, willful and materially false statements, as are defined under Section 1001 of Title 18 of the United States Code, are punishable by fine, imprisonment, or both under Section 1001, and that such statements may affect the validity of any patent issuing from '641 if the application is revived.

Dated: 12/10/08

Shawn W. O'Dowd  
Shawn W. O'Dowd

# EXHIBIT 1 TO O'DOWD DECLARATION

08/750641

APPROVED FOR LICENSE

INITIALS 28

SP95/0245

Date Received or Mailed

## PATENT APPLICATION



08750641

Date Entered or Counted

MAR 2 1997

FEB 14 1997

1. Application 14 papers.

2. 903

3. IDS 3-18-97

4. IDS 6-2-97

5. Pre-Admin/Ad 12-16-97

6. IDS 6-27-97

7. Info kind state Sep 4, 1998

8. Pre-Admin/Ad

9. Pre-Admin/Ad 66616 NDC

10. Pre-Admin/Ad 11/23/99

11. Pre-Admin/Ad 2-23-00

12. Pre-Admin/Ad 2-29-00

13. Pre-Admin/Ad 3-15-00

14. Pre-Admin/Ad 3-15-00

15. Pre-Admin/Ad 4-17-00

16. Notice of Allowance 4-17-00

17. Notice of Allowance

18. Notice of Abandonment SEP 13 2000

19. Change Address 10-30-00

20. IDS 11/18-3

21. IDS 9/10/4

22. Request for Access 7/10/05

23.

24.

25.

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27.

28.

29.

30.

31.

32.



UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/750,641 12/15/96 SATO

K 77792/23

EXAMINER

PM82/0229

FRANK PIETRANTONIO  
KENYON & KENYON  
1025 CONNECTICUT AVENUE NW  
WASHINGTON DC 20036

HERNANDEZ, O

ART UNIT PAPER NUMBER

3661

DATE MAILED: 02/29/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

<b>Advisory Action</b>	Application No. <b>08/750,641</b>	Applicant(s) <b>Sato et al.</b>	
	Examiner <b>Olga Hernandez</b>	Group Art Unit <b>3881</b>	

**THE PERIOD FOR RESPONSE:** (check only a) or b))

a) ☒ expires 9 months from the mailing date of the final rejection.

b) ☐ expires either three months from the mailing date of the final rejection, or on the mailing date of this Advisory Action, whichever is later. In no event, however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

☐ Appellant's Brief is due two months from the date of the Notice of Appeal filed on \_\_\_\_\_ (or within any period for response set forth above, whichever is later). See 37 CFR 1.191(d) and 37 CFR 1.192(a).

Applicant's response to the final rejection, filed on Nov 23, 1999 has been considered with the following effect, but is NOT deemed to place the application in condition for allowance:

☐ The proposed amendment(s):

- ☐ will be entered upon filing of a Notice of Appeal and an Appeal Brief.
- ☐ will not be entered because:
  - ☐ they raise new issues that would require further consideration and/or search. (See note below).
  - ☐ they raise the issue of new matter. (See note below).
  - ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
  - ☐ they present additional claims without cancelling a corresponding number of finally rejected claims.

**NOTE:** \_\_\_\_\_

☐ Applicant's response has overcome the following rejection(s): \_\_\_\_\_

☐ Newly proposed or amended claims \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment cancelling the non-allowable claims.

☒ The affidavit, exhibit or request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
applicant arguments are not directly to the claimed subject matter

☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

☒ For purposes of Appeal, the status of the claims is as follows (see attached written explanation, if any):

Claims allowed: \_\_\_\_\_

Claims objected to: 7-10

Claims rejected: 1-6

☐ The proposed drawing correction filed on \_\_\_\_\_ ☐ has ☐ has not been approved by the Examiner.

☐ Note the attached Information Disclosure Statement(s), PTO-1449, Paper No(s).

☐ Other

**WILLIAM A. CUCHINSKI, JR.**  
 SUPERVISORY PATENT EXAMINER  
 TECHNOLOGY CENTER 3600

# EXHIBIT 2 TO O'DOWD DECLARATION

IPSScdNat  
Kenyon & Kenyon

## Patent Jacket Data Sheet

Toyota/YICI  
77762 / 23

S. O'DOWD  
DANIEL G. SHANLEY

P25830 USW

I. SCHEUGENPFLUG

Client Ref

Office DC

Title SCHEDULE SETTING AND PROCESSING SYSTEM

Prosecution Particulars				Parties	
Prosecution Status	Live - Pending			Applicant/Regd.	TOYOTA JIDOSHA KABUS
Priority Claimed	6-298290	01-Dec-1994	Japan	Inventor	KIZU, Masafumi
Parent	PCT/JP95/02459	01-Dec-1995	WO	Inventor	MORITA, Makoto
Application	08/750641	01-Dec-1995	US [PCT]	Inventor	SATO, Koji
Filed on		16-Dec-1996		Inventor	YAMASHITA, Masanobu
Publication				Reel/Frame	8387 / 229
Allowed					
Grant Fees Paid					
Grant					
Expiry					
Agent	KENYON N.Y.				
Renewal Particulars					
Renewal Status	Pre-Grant				
Annuity					
Next Due					
Next Cost					
Cost Rest of Life					
Comm Date	Communication / Action	Due Date	Last Date	Response Filed	
16-Dec-1996	30 MONTH NATIONAL PHASE APPLIC	16-Dec-1996	16-Dec-1996	16-Dec-1996	
16-Dec-1996	IDS Due	16-Dec-1996	16-Dec-1996	16-Dec-1996	
16-Dec-1996	Preliminary Amendment	16-Dec-1996	16-Dec-1996	16-Dec-1996	
16-Dec-1996	Recordal	16-Dec-1996	16-Dec-1996	16-Dec-1996	
12-Feb-1997	NOTICE OF ACCEPTANCE OF APPLIC				
14-Mar-1997	Filing Receipt				
18-Mar-1997	IDS -- supp'l IDS	18-Mar-1997	18-Mar-1997	18-Mar-1997	
07-May-1997	Recordal	07-May-1997	07-May-1997	07-May-1997	
02-Jun-1997	IDS -- supp'l IDS	02-Jun-1997	02-Jun-1997	02-Jun-1997	
27-Jun-1997	IDS -- supp'l IDS	27-Jun-1997	27-Jun-1997	27-Jun-1997	
04-Sep-1998	IDS -- supp'l IDS	04-Sep-1998	04-Sep-1998	04-Sep-1998	
17-Mar-1999	IDS -- supp'l IDS	17-Mar-1999	17-Mar-1999	17-Mar-1999	
12-Oct-1999	Ext of Time Requested	12-Oct-1999	12-Oct-1999	12-Oct-1999	
09-Jun-1999	Respond to Official Action	09-Nov-1999	09-Nov-1999	12-Oct-1999	
23-Nov-1999	R116 Response to Final Due	23-Jan-2000	23-Jan-2000	23-Feb-2000	
23-Nov-1999	Notice of Appeal Due	23-Feb-2000	23-May-2000	15-Mar-2000	
	CPA Appl'n. Filed	15-Mar-2000	15-Mar-2000	15-Mar-2000	
	Suppl. Info. Discl. State.	15-Mar-2000	15-Mar-2000	15-Mar-2000	
08-Sep-2003	Status Inquiry	08-Sep-2003	08-Sep-2003	08-Sep-2003	
	Fee IDS per 11/13/03 agent let	05-Dec-2003	05-Dec-2003	18-Nov-2003	
09-Sep-2004	Supplemental IDS Filed	09-Sep-2004	09-Sep-2004	09-Sep-2004	
15-Sep-2004	Letter to PTO	15-Sep-2004	15-Sep-2004	15-Sep-2004	
06-Aug-2008	Petition Filed	06-Aug-2008	06-Aug-2008	06-Aug-2008	
06-Aug-2008	Request Continued Examination	06-Aug-2008	06-Aug-2008	06-Aug-2008	
	Advisory Action Received	29-Feb-2000	29-Feb-2000		
	PTO lost file-awaiting OA	15-Jul-2002	15-Jul-2002		
12-Sep-2008	Decision on Petition - Dismiss		12-Sep-2008		

Updated 03/16/08 YYY Unde Printed 15 Sep 2008

Patent Jacket Data Sheet

77762/23

Page 1 of 2

IPSSdataNet  
Kanyan & Kanyan

## Patent Jacket Data Sheet

10-Sep-2008 Response Re Petition due

10-Nov-2008 10-Mar-2009

# EXHIBIT 3 TO O'DOWD DECLARATION

FORM PTO/SB/29 (12/97)

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

## CONTINUED PROSECUTION APPLICATION (CPA) REQUEST TRANSMITTAL FORM 37 C.F.R. §1.53(d)



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Reg. Ex. Line  
PAU3661  
+ Reg. Ex. Line  
3-21-a  
RECEIVED  
MAR 17 2000  
TC 3600 MAIL ROOM

DOCKET NO.	ANTICIPATED CLASSIFICATION OF THIS APPLICATION:	PRIOR APPLICATION	EXAMINER	ART UNIT
77792/23	CLASS SUBCLASS	08/750,641	O. Hernandez	3661

Address to:  
Assistant Commissioner for Patents  
Washington D.C. 20231  
Box CPA

NAMED INVENTORS: K. SATO et al.

This is a request for filing a continuation application under 37 C.F.R. § 1.53(d) (continued prosecution application (CPA)) of pending prior application Serial No. 08/750,641, filed on December 16, 1996, entitled SCHEDULE SETTING AND PROCESSING SYSTEM.

### 1. The filing fee is calculated below:

	NUMBER FILED	NUMBER EXTRA	RATE (\$)	FEE (\$)
BASIC FEE				690.00
TOTAL CLAIMS	10 - 20 =	0	18.00	0.00
INDEPENDENT CLAIMS	1 - 3 =	0	78.00	0.00
MULTIPLE DEPENDENT CLAIM PRESENT			270.00	
*Number extra must be zero or larger			TOTAL	690.00
If Applicant is a small entity under 37 C.F.R. §§ 1.9 and 1.27, then divide total fee by 2, and enter amount here.			SMALL ENTITY TOTAL	N/A

2. Please charge the required application filing fee of \$690.00 to the deposit account of Kenyon & Kenyon, deposit account number 11-0600.

3. The Commissioner is authorized to charge \$110.00 for one-month Extension of Time.

03/16/2000 SLUNSHI 00000068 110.00 03750641

01 FC:133 690.00 CH  
02 FC:113 110.00 CH



## EXHIBIT 4 TO O'DOWD DECLARATION

\*\*\*\*\*  
TRANSMISSION REPORT  
\*\*\*\*\*

(WED) MAR 29 2000 12:30

DOCUMENT #	TIME STORED	TIME SENT	DURATION	PAGE(S)	MODE	RESULT
5760365-120	3. 29 12:27	3. 29 12:27	2' 09"	6	ECM	OK

DESTINATION	DST. TEL #
97033053597	97033053597



### KENYON & KENYON

1500 K Street, NW  
Washington, DC 20005  
(202)220-4200  
Fax: (202)220-4201

## FACSIMILE COVER SHEET

TO: EXAMINER OLGA HERNANDEZ

FAX NO: 703 305-3597

DATE: March 29, 2000

FROM: Sterlon Mason  
Kenyon & Kenyon

SUBJECT: PRELIMINARY AMENDMENT TO CPA FOR U.S. APPLN. SERIAL NO.  
08/750,641

CLIENT/MATTER NO.: 77792/23

NO. OF PAGES INCLUDING COVER:

Please call (202)220-4264 if any pages were not received or are illegible.

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MESSAGE:

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventors : Koji SATO et al.  
Serial No. : 08/750,641  
Filed : December 16, 1996  
For : SCHEDULE SETTING AND PROCESSING  
SYSTEM  
Group Art Unit : 2316  
Examiner : O. Hernandez

ASSISTANT COMMISSIONER FOR PATENTS  
Washington, D.C. 20231

PRELIMINARY AMENDMENT

S I R:

By Office Action dated November 23, 1999, pending claims 1-6 were finally rejected and claims 7-10 were objected to.

Applicants filed a Response to Final Office Action Pursuant to 37 C.F.R. §1.116 on February 23, 2000, submitting remarks to traverse the rejections. However, by Advisory Action dated February 29, 2000, the rejections were maintained.

Applicants therefore filed a Request for a Continued Prosecution Application (CPA) pursuant to 37 C.F.R. §1.53(d) on March 15, 2000.

Please enter the following amendments prior to examination of the above-identified application.

IN THE CLAIMS:

Please amend claim 1 as follows. All of the claims have been presented for the Examiner's convenience.

1. (Three Times Amended) A schedule-set-up management system comprising:  
inputting means for entering at least destination information and desired arrival time  
information;

frame-preparing means for preparing a basic frame of a schedule including types of intermediate and final locations, and a transfer order, indicating a chronological sequence of events in said basic frame based on said destination information and desired arrival time information; and

schedule-preparing means for accessing a data base to retrieve specific facilities fitting said basic frame, thereby preparing a schedule in which intermediate and final locations are specified.

2. (Unchanged) The schedule-set-up management system is accordance with Claim 1, wherein said frame-preparing means selects one basic frame of a schedule which fits said destination information and desired arrival time information from a plurality of basic frames pre-stored in a memory device.

3. (Unchanged) The schedule-set-up management system in accordance with Claim 1, wherein said inputting means and frame-preparing means are disposed in a terminal device, said schedule-preparing means disposed in a host device, said terminal device and host device are connected via a communication line, said terminal device transmits said basic frame- prepared by said frame preparing means to said host device, said host device transmits said schedule prepared by said schedule-preparing means to said terminal device.

4. (Unchanged) The schedule-set-up management system in accordance with Claim 3, wherein said terminal device has a display means for displaying: a touch switch used for entering said destination information and desired arrival time information; said prepared basic frame; and said transmitted schedule.

5. (Unchanged) The schedule-set-up management system in accordance with Claim 1, further comprising:

route-searching means for searching an optimum route for carrying out said schedule using map data.

6. (Unchanged) The schedule-set-up management system in accordance with claim 3, wherein said terminal device disconnects the communication line connecting with said host device after transmitting said basic frame, and reconnects the communication line connecting with said host device after completing the preparation of said schedule in order to receive said schedule.

7. (Unchanged) The schedule-set-up management system in accordance with Claim 1, further comprising:  
a watch center for watching the implementation of said schedule, wherein said schedule-preparing means re-prepares a schedule based on information from said watching center.

8. (Unchanged) The schedule-set-up management system in accordance with Claim 7, wherein said watching center has information-obtaining means for obtaining position information of a schedule implementer, information of the intermediate locations in said schedule and traffic information between the intermediate locations, the obtained information being supplied to said schedule-preparing mean.

9. (Unchanged) The schedule-set-up management system in accordance with Claim 8, wherein said information-obtaining means of said watching center further obtains weather information, and supplies the obtained weather information to said schedule-preparing means.

10. (Unchanged) The schedule-set-up management system in accordance with Claim 7, wherein said schedule-preparing means evaluates the influence of the information supplied from said watching center of the implementation of said schedule, and again prepares a schedule based on evaluation results.

#### **REMARKS**

The final Office Action mailed November 23, 1999 and the Advisory Action mailed February 29, 2000 have been carefully reviewed and the foregoing amendments and

following remarks are made thereto. Claims 1-10 are presently pending in this application for consideration.

As a preliminary matter, Applicants thank Examiner Hernandez for her courtesies extended to Applicants' representative during the March 23, 2000 telephonic interview. The substance of the interview is embodied in the following remarks.

The final Office Action rejects claims 1-4 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,237,499 to Garback in view of travel planning system (travelersnet.com) [hereinafter "Travelers"] and U.S. Patent No. 4,862,357 to Ahlstrom et al. [hereinafter "Ahlstrom"] and claim 5 under the same as being unpatentable over the combination of Garback and Travelers in further view of U.S. Patent No. 5,757,289 to Nimura et al. [hereinafter "Nimura"]. In addition, the Advisory Action indicates that Applicants' arguments were not directed to the claimed subject matter.

Applicants respectfully submit that the amended claims are patentably distinguishable over the cited references as required by §103. Applicants further submit that the cited references fail to disclose "a frame-preparing means for preparing a basic frame of a schedule including types of intermediate and final locations, and a transfer order indicated a chronological sequence of events in said basic frame, based on said destination information and desired arrival time information" as recited in independent claim 1. Thus, these claims are allowable over the cited references.

A "transfer order" refers to a chronological sequence of events in a basic frame. One example of such a sequence is described in the specification, on page 11, lines 8-15, in which the transfer order of events is as follows: departure → walk → lunch → amusement park → night view → return back. Another example is also shown on page 12. The basic frame of the present invention consists of a type of location and the transfer order, and a more specific schedule is prepared based on this basic frame. The idea of the present invention in which the basic frame comprising the type and order is initially determined is not disclosed in the cited references.

#### Conclusion

Examination of this application in light of the foregoing amendment is respectfully requested. The Examiner is invited to contact the undersigned at (202) 220-4240 to discuss

Serial No. 08/750,641  
Docket: 77792/23

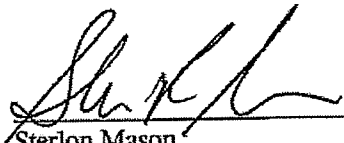
any matter concerning this application.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. §1.16 or 1.17 to Deposit Account No. 11-0600.

Respectfully submitted,

KENYON & KENYON

Dated: March 29, 2000

  
Sterlon Mason  
Reg. No. 41,179

KENYON & KENYON  
1500 K Street, N.W.  
Washington, DC 20005  
tel : 202/220-4200  
fax: 202/220-4201

# EXHIBIT 5 TO O'DOWD DECLARATION

<b>Notice of Allowability</b>	Application No.	Applicant(s)	
	06/759,641	SATO ET AL.	
	Examiner	Art Unit	
	Olga Hernandez	3661	

*The MAILING DATE of this communication appears on the cover sheet with the correspondence address--*  
 All claims being allowed, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance and Issue Fee Due or other appropriate communication will be mailed in due course.

1. ☒ This communication is responsive to amendment filed on 3/29/00.
2. ☒ The allowed claim(s) is/are 1-10.
3. ☐ The drawings filed on \_\_\_\_\_ are acceptable.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - a) ☐ All    b) ☐ Some    c) ☐ None    of the CERTIFIED copies of the priority documents have been
    1. ☐ received.
    2. ☐ received in Application No. (Series Code / Serial Number) \_\_\_\_\_.
    3. ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_

5. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. & 119(e).

A SHORTENED STATUTORY PERIOD FOR REPLY to comply with the requirements noted below is set to EXPIRE THREE MONTHS FROM THE "DATE MAILED" of this Office Action. Failure to timely comply will result in ABANDONMENT of this application. Extensions of time may be available under the provisions of 37 CFR 1.136(a).


6. ☐ Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient. A SUBSTITUTE OATH OR DECLARATION IS REQUIRED.
7. ☒ Applicant MUST submit NEW FORMAL DRAWINGS
  - (a) ☐ because the originally filed drawings were declared by applicant to be Informal.
  - (b) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
    - 1) ☐ hereto or 2) ☒ to Paper No. 8.
  - (c) ☐ including changes required by the proposed drawing correction filed \_\_\_\_\_ which has been approved by the examiner.
  - (d) ☐ including changes required by the attached Examiner's Amendment / Comment.

Identifying Indicia such as the application number (see 37 CFR 1.84(c)) should be written on the reverse side of the drawings. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

8. ☐ Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Any reply to this letter should include, in the upper right hand corner, the APPLICATION NUMBER (SERIES CODE / SERIAL NUMBER), if applicant has received a Notice of Allowance and Issue Fee Due, the ISSUE BATCH NUMBER and DATE of the NOTICE OF ALLOWANCE should also be included.

<b>Attachment(s)</b> 1 <input checked="" type="checkbox"/> Notice of References Cited (PTO-B92) 3 <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 5 <input checked="" type="checkbox"/> Information Disclosure Statements (PTO-1449), Paper No. 14 7 <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material	2 <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) 4 <input type="checkbox"/> Interview Summary (PTO-413), Paper No. _____ 6 <input type="checkbox"/> Examiner's Amendment/Comment 8 <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance 9 <input type="checkbox"/> Other
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**WILLIAM A. CUCHLINSKI, JR.**  
 SUPERVISORY PATENT EXAMINER  
 TECHNOLOGY CENTER-3600

# EXHIBIT 6 TO O'DOWD DECLARATION

1560 PART B—ISSUE FEE TRANSMITTAL

Complete and mail this form, together with application fees, to: **Box ISSUE FEE**  
Assistant Commissioner for Patents  
Washington, D.C. 20231

**MAILING INSTRUCTIONS:** This form should be used for transmitting the ISSUE FEE. Block 1 must be completed and Block 2 must be completed when appropriate. All further correspondence regarding the Issue Fee should be directed to the Assistant Commissioner for Patents. Advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated (unless corrected below or directed otherwise in Block 1, by (a) applicant, (b) assignee, (c) attorney, or (d) agent; and/or (b) indicating a separate "FREE ADDRESS" for correspondence for the notification.

**Current Correspondence Address:** (legally make-up with any corrections or use Block 1)

FRANK PIETRANTONIO  
KENYON & KENYON  
1025 CONNECTICUT AVENUE, NW  
WASHINGTON DC 20036

PH82/C417

**Certificate of Mailing**  
I hereby certify that this Issue Fee Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Box Issue Fee address above on the date indicated below.

(Depositor's name)  
(Signature)  
(Date)

APPLICATION NO.	FILING DATE	TOTAL CLAUSES	EXAMINER AND GROUP ART UNIT	DATE MAILED
08/750,641	12/16/96	010	HERNANDEZ, O 3661	04/17/00

First Named Applicant: SATO, 35-USA 154(B), term ext. 10 (10/15/00)

**TITLE OF SCHEDULE SETTING AND PROCESSING SYSTEM INVENTION**

**MATCH & RETURN**

ATTY'S DOCKET NO.	CLASS-SUBCLASS	BATCH NO.	APPL. TYPE	SMALL ENTITY	FEE DUE	DATE DUE
2 77792/23	701-202.000	121	UTILITY	NO	\$1210.00	07/17/00

1. Change of correspondence address or indication of "Free Address" (PTO Form 1503). Use of PTO form(s) and Customer Number are recommended, but not required.  
☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.  
☐ "Free Address" indication (or "Free Address" indication form PTO/SB/47) attached.

2. For printing on the patent front page, list (1) the names of up to 3 registered patent attorneys or agents OR, alternatively, (2) the name of a single firm (listing as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed.

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type). PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. Inclusion of assignee data is only appropriate when an assignment has been previously submitted to the PTO or is being submitted under separate cover. Completion of this form is NOT a substitute for filing an assignment.  
(A) NAME OF ASSIGNEE  
(B) RESIDENCE (CITY & STATE OR COUNTRY)  
Please check the appropriate assignee category indicated below (will not be printed on the patent):  
☐ Individual ☐ corporation or other private group entity ☐ government

4a. The following fees are enclosed (make check payable to Commissioner of Patents and Trademarks):  
☐ Issue Fee  
☐ Advance Order - # of Copies

4b. The following fees or deficiency in these fees should be charged to:  
DEPOSIT ACCOUNT NUMBER (ENCLOSE AN EXTRA COPY OF THIS FORM):  
☐ Issue Fee  
☐ Advance Order - # of Copies

The COMMISSIONER OF PATENTS AND TRADEMARKS is requested to apply the Issue Fee to the application identified above.  
(Authorized Signature) (Date)

NOTE: The Issue Fee will not be accepted from anyone other than the applicant, a registered attorney or agent, or the assignee or other party in interest as shown by the records of the Patent and Trademark Office.

**Working Hour Statement:** This form is estimated to take 0.2 hours to complete. Time will vary depending on the needs of the individual case. Any comments on the amount of time required to complete this form should be sent to the Chief Information Officer, Patent and Trademark Office, Washington, D.C. 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND FEES AND THIS FORM TO: Box Issue Fee, Assistant Commissioner for Patents, Washington D.C. 20231

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

TRANSMIT THIS FORM WITH FEE

PTO-558 (REV. 10-96) Approved for use through 06/30/99. OMB 0651-0033

Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE

4/17/00

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TC 3600 MAIL ROOM



# EXHIBIT 7 TO O'DOWD DECLARATION



UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
08/750.841	12/16/96	SATO	K 77792/23

7542/0913

FRANK PIETRANTONIO  
KENYON & KENYON  
1025 CONNECTICUT AVENUE NW  
WASHINGTON DC 20036

EXAMINER  
HERNANDEZ, D

ART UNIT PAPER NUMBER  
3661 18

DATE MAILED: 09/13/00

## NOTICE OF ABANDONMENT

This application is abandoned in view of:

- ☐ Applicant's failure to timely file a proper response to the Office letter mailed on \_\_\_\_\_
  - ☐ A response (with a Certificate of Mailing or Transmission of \_\_\_\_\_) was received on \_\_\_\_\_, which is after the expiration of the period for response (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_
  - ☐ A proposed response was received on \_\_\_\_\_, but it does not constitute a proper response to the final rejection.  
(A proper response to a final rejection consists only of: a timely filed amendment which places the application in condition for allowance; a Notice of Appeal; or the filing of a continuing application under 37 CFR 1.62 (FWC).
  - ☐ No response has been received.
- ☒ Applicant's failure to timely pay the required issue fee within the statutory period of three months from the mailing date of the Notice of Allowance.
  - ☐ The issue fee (with a Certificate of Mailing or Transmission of \_\_\_\_\_) was received on \_\_\_\_\_
  - ☐ The submitted issue fee of \$\_\_\_\_\_ is insufficient. The issue fee required by 37 CFR 1.16 is \$\_\_\_\_\_.
  - ☒ The issue fee has not been received.
- ☐ Applicant's failure to timely file new formal drawings as required in the Notice of Allowability.
  - ☐ Proposed new formal drawings (with a Certificate of Mailing or Transmission of \_\_\_\_\_) were received on \_\_\_\_\_
  - ☐ The proposed new formal drawings filed \_\_\_\_\_ are not acceptable.
  - ☐ No proposed new formal drawings have been received.
- ☐ The express abandonment under 37 CFR 1.62(g) in favor of the FWC application filed on \_\_\_\_\_
- ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
- ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity) under 37 CFR 1.34(a) upon the filing of a continuing application.
- ☐ The decision by the Board of Patent Appeals and Interferences rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.
- ☐ The reason(s) below:

ABANDONMENT  
CONTACT PERSON IS:  
TOM HAWKINS  
305-8380

FORM PTO-1432 (REV. 10-96)

# EXHIBIT 8 TO O'DOWD DECLARATION

17

Please type a plus sign (+) inside this box → ☐

PTO/SB/122 (11-95)  
Approved for use through 6/30/99, OMB 0651-0035  
Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE  
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<b>CHANGE OF CORRESPONDENCE ADDRESS</b> <i>Application</i> Address to: Assistant Commissioner for Patents Washington, D.C. 20231	Application Number	08/750,641
	Filing Date	12/16/96
	First Named Inventor	Sato
	Group Art Unit	2316
	Examiner Name	
	Attorney Docket Number	77792/23

Toyota / Yoshida

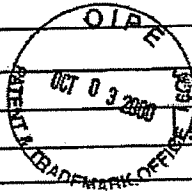
Please change the Correspondence Address for the above-identified application to:

☒ Customer Number 23838  
Type Customer Number here



OR

<input type="checkbox"/> Firm or Individual Name			
Address			
Address			
City	State	ZIP	
Country			
Telephone		Fax	



This form cannot be used to change the data associated with a Customer Number. To change the data associated with an existing Customer Number use "Request for Customer Number Data Change" (PTO/SB/124).

I am the :

- ☐ Applicant.
- ☐ Assignee of record of the entire interest.  
Certificate under 37 CFR 3.73(b) is enclosed.
- ☒ Attorney or agent of record.

Typed or Printed Name	John G. Alt Miller
Signature	<i>John G. Alt Miller</i>
Date	10/2/00

Burdan Hour Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

# EXHIBIT 9 TO O'DOWD DECLARATION



Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE  
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

<b>CHANGE OF CORRESPONDENCE ADDRESS</b> Application  Address to: Assistant Commissioner for Patents Washington, D.C. 20231	Application Number	08/750,641
	Filing Date	12/16/96
	First Named Inventor	Sato
	Group Art Unit	2316
	Examiner Name	
	Attorney Docket Number	77792/200

Please change the Correspondence Address for the above-identified application to:

☒ Customer Number 23838  
Type Customer Number here

OR

☐ Firm or Individual Name

Address

Address

City State ZIP

Country

Telephone Fax

This form cannot be used to change the data associated with a Customer Number. To change the data associated with an existing Customer Number use "Request for Customer Number Data Change" (PTO/SB/124).

I am the:

☐ Applicant.

☐ Assignee of record of the entire interest. Certificate under 37 CFR 3.73(b) is enclosed.

☒ Attorney or agent of record.

Typed or Printed Name: John G. Alt Miller

Signature: John G. Alt Miller

Date: 10/2/00

RECEIVED  
OCT 4 2000  
TECHNOLOGY CENTER 2800

Burden Hour Statement: This form is estimated to take 6.2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

## EXHIBIT 10 TO O'DOWD DECLARATION

PATENT  
Docket No. 77792/23

### IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANTS : Koji SATO, et al.  
SERIAL NO. : 08/750,641  
FILED : December 16, 1996  
FOR : SCHEDULE SETTING AND PROCESSING SYSTEM  
GROUP ART UNIT : 2316  
EXAMINER : O. Hernandez

Assistant Commissioner for Patents  
Washington D.C. 20231

### CHANGE OF CORRESPONDENCE ADDRESS

S I R:

Notice is hereby given that the correspondence address in the above-identified application has changed. Please address all future communications regarding this application to:

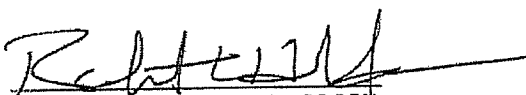
John C. Altmiller  
KENYON & KENYON  
1500 K Street, N.W.  
Washington, D.C. 20006

This address change is effective immediately. Thank you.

Respectfully submitted,

KENYON & KENYON

Dated: October 30, 2000

  
John C. Altmiller (Reg. No. 25,951)  
Robert L. Hails, Jr. (Reg. No. 39,702)

KENYON & KENYON  
1500 K Street, N.W., Suite 700  
Washington, DC 20005  
(202) 220-4200  
(202) 220-4201 (fax)

## EXHIBIT 11 TO O'DOWD DECLARATION

FROM: KENYON & KENYON DC

(NON) 10:30:00 16:11:11 T. 16:11:11 NO. 4861508829 P 1

### KENYON & KENYON

1500 K STREET, NW  
WASHINGTON, DC 20005  
(202) 220-4200  
FAX: (202) 220-4201

3661 #19

### FACSIMILE COVER SHEET

TO: Examiner Olga Hernandez  
FAX NO: 703 305-3597  
DATE: October 30, 2000  
FROM: Robert L. Hails, Jr. (202 220-4235)  
SUBJECT: Patent Application S.N. 08/750,641  
CLIENT/MATTER NO.: 77792/23  
NO. OF PAGES INCLUDING COVER: 2

FAX RECEIVED  
OCT 30 2000  
GROUP 3600

Official

Please call (202)220-4297 if any pages were not received or are illegible.

### MESSAGE:

Please enter the enclosed communication in application S.N. 08/750,641.

Regards,

Bob Hails

The information contained in this facsimile is attorney privileged and confidential information intended only for the use of the recipient named above. If you are not the intended recipient, or the person responsible to deliver it to the intended recipient, you are notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this facsimile in error, please immediately notify us by telephone, and return the original and all copies to us at the above address.

FROM: KENYON & KENYON-DC

(MON) 10:30:00 16:12:11 T. 16:11/NO. 4861508829 P 2

PATENT  
Docket No. 77792/23

#19  
6-12-0  
ORS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT'S : Koji SATO, et al.  
SERIAL NO. : 08/750,641  
FILED : December 16, 1996  
FOR : SCHEDULE SETTING AND PROCESSING SYSTEM  
GROUP ART UNIT : 2316  
EXAMINER : O. Hernandez

Assistant Commissioner for Patents  
Washington D.C. 20231

Official

FAX RECEIVED

OCT 30 2000

GROUP 3600

CHANGE OF CORRESPONDENCE ADDRESS

S I R:

Notice is hereby given that the correspondence address in the above-identified application has changed. Please address all future communications regarding this application to:

John C. Altmiller  
KENYON & KENYON  
1500 K Street, N.W.  
Washington, D.C. 20006

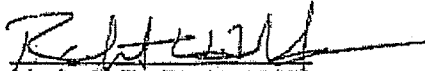
This address change is effective immediately. Thank you.

Respectfully submitted,

KENYON & KENYON

Dated: October 30, 2000

KENYON & KENYON  
1500 K Street, N.W., Suite 700  
Washington, DC 20005  
(202) 220-4200  
(202) 220-4201 (fax)

  
John C. Altmiller (Reg. No. 25,951)  
Robert L. Hails, Jr. (Reg. No. 39,702)

DC01 322791 v 1

## EXHIBIT 12 TO O'DOWD DECLARATION

7



PATENT  
Docket No.: 77792/23

### IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT :  
SERIAL NO. : 08/750641  
FILING DATE : December 16, 1996  
FOR : SCHEDULE SETTING AND PROCESSING SYSTEM

Commissioner of Patents and Trademarks  
Washington D.C. 20231

### ASSOCIATE POWER OF ATTORNEY

Sir:

Please recognize John C. Altmiller, (Reg. No. 25,951) and other registered practitioners of Kenyon & Kenyon included in the Customer Number provided below, with full power to prosecute said application, to make alterations and amendments therein, and to transact all business in the Patent and Trademark Office connected therewith.

CUSTOMER NUMBER: 23838

Respectfully submitted,

Date November 6, 2000

Edward W. Greason  
Edward W. Greason  
Reg. No. 18,918

KENYON & KENYON  
One Broadway  
New York, NY 10004  
(212) 425-7200 (telephone)

## EXHIBIT 13 TO O'DOWD DECLARATION

CATHY RYAN  
KENYON & KENYON

1500 K STREET, N.W., SUITE 300  
WASHINGTON, D.C. 20005-1257  
PHONE (202) 225-4228

DIRECT DIAL (202) 225-4279  
FAX (202) 225-4291  
E-MAIL: ckenyon@kenyon.com

1/12/00

Conversation w/ Group receptionist  
File has been reported lost  
in USPTO (11/27th). The  
last known destination  
for this file was the  
file repository. There  
is no record of  
anyone ordering this  
file. I recommend contacting  
the Examiner to see if  
they need our file to  
rebuild the lost one.



**KENYON & KENYON**

1500 E STREET, N.W., SUITE 202  
WASHINGTON, D.C. 20004-1257  
PHONE (202) 326-4300

FAX 1203: 777-4701

1/12/01 10:45

Left message w/o Hernandez

Power to Inspect

[illegible]

7000

**EXHIBIT 14 TO O'DOWD DECLARATION**

*Lost 1/16/01*

**PATENT**  
Docket No. 77792/23

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Inventors : Koji SATO et al.  
Serial No. : 08/750,641  
Filed : December 16, 1996  
For : SCHEDULE SETTING AND PROCESSING SYSTEM  
Examiner : O. Hernandez

Assistant Commissioner of Patents  
Washington D.C. 20231

**POWER TO INSPECT AND MAKE COPIES**


SIR:

Denise English and Jay Johnson are hereby authorized to inspect and copy the file for the above-captioned matter.

Respectfully submitted,

KENYON & KENYON

Date: 2/7/01, 2001

  
John C. Altmiller, Registration No. 25,951  
KENYON & KENYON  
1500 K Street, N.W. Suite 700  
Washington, D.C. 20005  
Telephone: (202) 220-4200  
Facsimile: (202) 220-4201

lost 1/16/01

PATENT  
Docket No. 77792/23

EMARK OFFICE

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Assistan  
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SIR:

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Cash

Date: 2

John C. Altmiller, Registration No. 25,951  
KENYON & KENYON  
1500 K Street, N.W. Suite 700  
Washington, D.C. 20005  
Telephone: (202) 220-4200  
Facsimile: (202) 220-4201

## EXHIBIT 15 TO O'DOWD DECLARATION

PATENT  
Docket No.: 77792/23

### IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT : Koji SATO, et al.  
SERIAL NO. : 08/750,641  
FILING DATE : December 16, 1996  
FOR : SCHEDULE SETTING AND PROCESSING SYSTEM  
GROUP ART UNIT : 2316  
EXAMINER : O. HERNANDEZ

Assistant Commissioner for Patents  
Washington, D.C. 20231

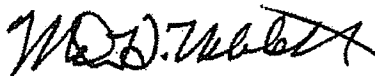
### FILE RECONSTRUCTION

SIR:

We have been informed by the Office that the U.S. Patent and Trademark Office's file for the above-referenced case has been lost. Please find attached a copy of the relevant documents forming the file history for this application from the applicant's files for use in reconstructing the Office's file.

Please reconstruct the file. Thank you for your attention to this matter. Please contact the undersigned at 202-220-4232, for any questions.

Respectfully submitted,



Mark H. Neblett  
Reg. No. 42,028

The stamp of the Patent Office hereon may be taken as acknowledging the receipt, on the date stamped, of

APPLICANTS: Koji SATO, et al.  
SERIAL NO.: 08/750,641  
FILED: December, 16, 1996  
FOR: *SCHEDULE SETTING AND PROCESSING  
SYSTEM*  
GROUP ART UNIT: 2316

PAPERS FILED:

1. File Reconstruction

MHN/cct

77792/23

3/22/0  
1

## EXHIBIT 16 TO O'DOWD DECLARATION

PATENT  
DOCKET NO.: 77792/23

### IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT(S): Koji SATO et al.  
SERIAL NO.: 08/750,641  
FILED: December 16, 1996  
FOR: SCHEDULE SETTING AND PROCESSING SYSTEM  
ART UNIT: 2316 EXAMINER: O. Hernandez

COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, VA 22313-1450

### STATUS INQUIRY

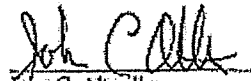
SIR:

Applicants for the above-cited U.S. application respectfully request that the Examiner inform Applicants of the status of the application. Applicants filed the application on December 16, 1996 and received an official Filing Receipt on March 14, 1997.

The U.S. Patent and Trademark Office notified Applicants that the subject file had been lost and, accordingly, Applicants filed a copy of the relevant documents forming the file history in a File Reconstruction on March 23, 2001.

The Commissioner is authorized to charge any fee relevant to this filing to Kenyon & Kenyon Deposit Account No. 11-0600. A duplicate of this sheet is attached.

Respectfully submitted,

  
John C. Altmiller  
(Reg. No. 25,951)

Date: September 8, 2003

KENYON & KENYON  
1500 K Street, N.W., Suite 700  
Washington, DC 20005  
Tel: (202) 429-1776  
Fax: (202) 429-0796

## EXHIBIT 17 TO O'DOWD DECLARATION

The stamp of the Patent Office hereon may be taken as acknowledging the receipt, on the date stamped, of:

INVENTOR(S): Koji SATO et al.  
SERIAL NO.: 08/750,641  
FILED: December 16, 1996  
TITLE: SCHEDULE SETTING AND PROCESSING SYSTEM  
GROUP ART: 2316  
EXAMINER: G. Hernandez

### PAPERS FILED:

I. Status Inquiry

JCA/ma

September 8, 2003



77792/23

## EXHIBIT 18 TO O'DOWD DECLARATION

The stamp of the Patent Office hereon may be taken as acknowledging the receipt, on the date stamped, of:

INVENTOR(S): Koji SATO et al.  
SERIAL NO.: 08/750,641  
FILED: December 16, 1996  
TITLE: SCHEDULE SETTING AND PROCESSING SYSTEM  
GROUP ART: 2316  
EXAMINER: O. Hernandez

### PAPERS FILED:

1. Information Disclosure Statement (2 pp.)
2. 1449A/PTO - Info. Disclosure Statement by Applicant
3. Foreign Patent Document - CN 1090666A



WEC/tl

77792/23

November 18, 2003



## EXHIBIT 19 TO O'DOWD DECLARATION



3661  
#20/ISS  
PATENT  
Attorney Docket No. 77792/23 2/13/4

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

APPLICANT(s) : Koji SATO, et al.

SERIAL NO. : 08/750,641

FILED : December 1, 1995

FOR : Schedule Setting and Processing System

EXAMINER : O. Hernandez

ART UNIT : 2316

### INFORMATION DISCLOSURE STATEMENT

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

RECEIVED  
NOV 24 2003  
GROUP 3600

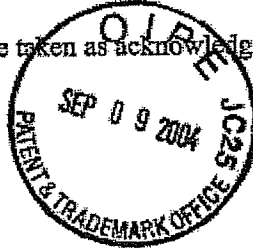
Sir:

Pursuant to 37 CFR § 1.56, the attention of the Patent and Trademark Office is hereby directed to the reference(s) listed on the attached PTO-1449. Unless otherwise indicated herein, one copy of each reference is attached. It is respectfully requested that the information be expressly considered during the prosecution of this application, and that the reference(s) be made of record therein and appear among the "References Cited" on any patent to issue therefrom. The filing of this Information Disclosure Statement and the enclosed PTO Form No. 1449, shall not be construed as an admission that the information cited is prior art, or is considered to be material to patentability as defined in 37 C.F.R. § 1.56(b). It is believed that no fees are due, but

## EXHIBIT 20 TO O'DOWD DECLARATION

The stamp of the Patent Office hereon may be taken as acknowledging the receipt, on the date stamped, of

INVENTORS: Koji SATO, et al.  
SERIAL NO. : 08/750,641  
FILED : 1 December 1995



Enclosed: INFORMATION DISCLOSURE STATEMENT, FORM  
PTO-1449, SEVEN REFS., EP SEARCH REPORT

WEC/is

77792/23

09/09/04

## EXHIBIT 21 TO O'DOWD DECLARATION



PATENT

Docket No. 77792/23

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANTS : Koji SATO, et al.  
SERIAL NO. : 08/750,641  
FILED : 1 December 1995  
FOR : SCHEDULE SETTING AND PROCESSING SYSTEM  
GROUP ART UNIT : 2316  
EXAMINER : O. Hernandez  
COMMISSIONER FOR PATENTS  
P. O. Box 1450  
Alexandria, Virginia 22313-1450

RECEIVED

SEP 15 2004

GROUP 3600

### INFORMATION DISCLOSURE STATEMENT UNDER 37 C.F.R. § 1.97 & § 1.98

SIR:

In conformance with Applicants' duty of disclosure under 37 C.F.R. § 1.56 and § 1.97(c)(1), the references listed on the attached form PTO-1449 are hereby brought to the Examiner's attention.

In compliance with 37 C.F.R. § 1.98, copies of the references are submitted herewith.

#### Statement of Relevancy

The references were cited in the European Search Report of a related European Patent Application. A copy of the Search Report is enclosed.

#### Statement Pursuant to 37 C.F.R. 1.97(e)(1)

The undersigned attorney hereby states that each item of information contained in this information disclosure statement was first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of the information disclosure statement.

## EXHIBIT 22 TO O'DOWD DECLARATION

PATENT  
Docket No. 77792/23

### IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventors : Koji SATO, et al.  
Serial No. : 08/750,641  
Filed : 16 December 1996  
For : SCHEDULE SETTING AND PROCESSING SYSTEM  
Group Art : 2316  
Examiner : O. Hernandez

COMMISSIONER FOR PATENTS  
P. O. Box 1450  
Alexandria, Virginia 22313-1450

### REQUEST FOR STATUS

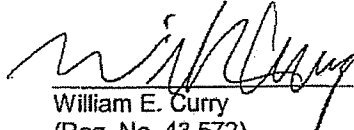
S I R:

A request for continued prosecution with an Information Disclosure Statement was filed in this case on 15 March 2000. A preliminary amendment was faxed to the Examiner on 29 March 2000. A change of correspondence address was filed on 30 October 2000. Thereafter, a copy of the entire file was submitted for re-construction of the lost file on 23 March 2001. A status inquiry was filed on 8 September 2003. Information Disclosure Statements were filed on 18 November 2003 and 9 September 2004, respectively.

It is respectfully requested that the undersigned be informed when an Office Action or other communication from the Patent Office may be expected in this case.

Respectfully submitted,

KENYON & KENYON

  
William E. Curry  
(Reg. No. 43,572)

Dated: 15 September 2004

1500 K Street, N.W., Suite 700  
Washington, DC 20005  
Tel: (202) 220-4200  
Fax: (202) 220-4201  
505235

The stamp of the Patent Office hereon may be taken as acknowledging the receipt,  
on the date stamped, of

Inventor(s): Koji SATO, et al.  
Serial No.: 08/750,641  
Filed: 16 December 1996



Enclosed:

REQUEST FOR STATUS

WEC/is

77792/23

09/15/04

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant : Koji SATO, et al.  
Application No. 08/750,641  
Filing Date : 16 December 1996  
Title : SCHEDULE SETTING AND PROCESSING SYSTEM  
Art Unit : Office of Petitions  
Examiner : L. Walsh

**Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450**

**DECLARATION OF  
DANIEL G. SHANLEY**

I, the undersigned, Daniel G. Shanley, make this declaration in support of the Renewed Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR § 1.137(b) for the above identified application.

1. From about January 9, 2006, I have been an associate of Kenyon & Kenyon LLP ("Kenyon") in Kenyon's Washington, DC office.

2. At Kenyon, I primarily prosecute patent applications in the mechanical and electrical arts, including prosecuting patent applications for Toyota Jidosha Kabushiki Kaisha ("Toyota"), the assignee of U.S. Patent Application Serial No. 08/750,641 ("641").

3. Shawn W. O'Dowd, a partner at Kenyon, is the supervising partner for most of the applications I prosecute for Toyota.

4. As of July 10, 2008, I was not docketed as a responsible attorney for '641, and to my knowledge, had no prior involvement with that case. On or about September 15, 2008, I was formally docketed as a responsible attorney for '641.

5. On July 10, 2008, presumably because I regularly assist with Toyota applications, I was forwarded a communication from Toyota's Japanese counsel inquiring as to the status of the

'641 application. The communication was addressed to William Curry, a former Kenyon employee. On that day, I replied to Toyota's Japanese counsel, indicating that Kenyon would look into the matter.

6. On July 10, 2008, I asked my assistant, Ingrid Hodge, to inquire as to the status of '641 immediately.

7. Later in the day on July 10, 2008, I learned from Ingrid Hodge for the first time that '641 may be abandoned.

8. I then asked Ingrid Hodge to obtain a partial file wrapper from the USPTO, so as to confirm that the '641 application had in fact abandoned.

9. On or about July 13, 2008, based on my review of a copy of USPTO's filewrapper for '641, I first gained actual knowledge that '641 had become abandoned.

10. On or about July 14, 2008, I reported my findings regarding the status of '641 to Toyota's Japanese counsel.

11. On or about July 23, 2008, Toyota's Japanese counsel directed Kenyon to file a petition to revive '641. At or about this time, Shawn W. O'Dowd took over primary responsibility for the '641 application.

12. I had no significant involvement with the filing of a petition to revive '641, other than providing information relevant to the preparation of this declaration.

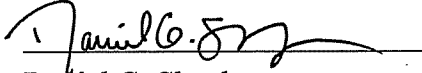
13. Prior to July 10, 2008, I do not recall the Office or anyone at Kenyon advising me that '641 had been abandoned.

14. To my knowledge and belief, the entire delay in filing the required reply for '641 from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

I declare that all of the above statements made based on my own knowledge are true and that all of the above statements that were made on information and belief are believed to be true,

and further declare that these statements are made with the knowledge that knowing, willful and materially false statements, as are defined under Section 1001 of Title 18 of the United States Code, are punishable by fine, imprisonment, or both under Section 1001, and that such statements may affect the validity of the any patent issuing from '641 if the application is revived.

Dated: 10 December 2008

  
Daniel G. Shanley



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant : Koji SATO, et al.  
Application No. 08/750,641  
Filing Date : 16 December 1996  
Title : SCHEDULE SETTING AND PROCESSING SYSTEM  
Art Unit : Office of Petitions  
Examiner : L. Walsh

Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**DECLARATION OF  
INGRID HODGE**

I, the undersigned, Ingrid Hodge, make this declaration in support of the Renewed Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR § 1.137(b) for the above identified application.

1. From about August 31, 1999, I have been an employee at Kenyon & Kenyon LLP ("Kenyon") in Kenyon's Washington, DC office.
2. At Kenyon, I am a secretary who assists several attorneys in various intellectual property matters. I frequently assist Daniel Shanley, an associate at Kenyon, with various patent prosecution matters, including patent prosecutions for Toyota Jidosha Kabushiki Kaisha ("Toyota"), the assignee of U.S. Patent Application Serial No. 08/750,641 ("641").
3. As of July 10, 2008, to my knowledge and belief, I had had no prior involvement with '641.
4. On July 10, 2008, I was asked by Daniel Shanley to inquire as to the status of '641.
5. On July 10, 2008, I first learned of the abandoned status of '641 from the USPTO. I was told by Ms. Hart of the Office of Petitions that '641 had abandoned. According to my notes,

Ms. Barr suggested that a "Petition to withdrawing of the holding of Abandonment" be filed along with "docket records, etc." My notes are attached as Exhibit 1 to this declaration.

6. I then consulted Daniel Shanley and Judith Russo regarding '641. I was instructed to obtain a partial file wrapper of '641 from the USPTO, starting with the final office action mailed November 23, 1999, so as to confirm that '641 had in fact abandoned. On July 10, 2008, I sent an e-mail to Ondrea Lugo requesting this partial file wrapper. This e-mail is attached as Exhibit 2 to this declaration.

7. Prior to July 10, 2008, I do not recall the Office or anyone at Kenyon advising me that '641 had been abandoned.

8. To my knowledge and belief, the entire delay in filing the required reply for '641 from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

I declare that all of the above statements made based on my own knowledge are true and that all of the above statements that were made on information and belief are believed to be true, and further declare that these statements are made with the knowledge that knowing, willful and materially false statements, as are defined under Section 1001 of Title 18 of the United States Code, are punishable by fine, imprisonment, or both under Section 1001, and that such statements may affect the validity of the any patent issuing from '641 if the application is revived.

Dated: December 10, 2008

Ingrid Hodge  
Ingrid Hodge

## EXHIBIT 2 TO HODGE DECLARATION

Page 1 of 1

Hodge, Ingrid

---

From: Hodge, Ingrid  
Sent: Thursday, July 10, 2008 2:43 PM  
To: Lago, Andrea  
Subject: 7776223 File Wrapper Request

Andrea,

We need a copy of the file wrapper starting with the Final Office Action mailed November 23, 1999 for the following list:

U.S. Patent Serial No. 08/760,541 filed December 16, 1996

We do not need anything prior to the Final Office Action mailed November 23, 1999.

Please let me know if you need anything else and how soon we can expect the copies.

Thanks,  
Ingrid

## EXHIBIT 1 TO HODGE DECLARATION

moved to K Street  
from 1999

08/750, 64

11/23/99	For
02/24/00	Advisory Action
03/15/00	CPA + 105
09/13/00	"Notice of Abandonment" Case was abandoned for failure to pay
10/30/00	Change of Correspondence Address <u>7</u> times the
11/06/00	Assoc. Power of Attorney
03/22/01	File Reconstitution - Case was lost at PTO
09/08/03	Status Inquiry
11/18/03	105
02/15/04	Status Inquiry
07/10/08	Office of Patents (Mr. Barr) Tel: 571-272-3282
⇒	File Petition of the Abandonment of the Abandonment → docket records, etc

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant : Koji SATO, et al.  
Application No. 08/750,641  
Filing Date : 16 December 1996  
Title : SCHEDULE SETTING AND PROCESSING SYSTEM  
Art Unit : Office of Petitions  
Examiner : L. Walsh

**Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450**

**DECLARATION OF  
WILLIAM E. CURRY**

I, the undersigned, William E. Curry (Reg. No. 43,572), make this declaration in support of the Renewed Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR § 1.137(b) for the above identified application.

1. I am currently a patent attorney working for the firm of Turocy & Watson, LLP. I am currently an associate, primarily specializing in preparing and prosecuting patent applications in the computer-related and mechanical arts.

2. From April 2, 2001 to about January 2007, I was an employee of Kenyon & Kenyon ("Kenyon") in Washington, DC, and was paid a salary by Kenyon through March 31, 2007. While employed in Washington, DC, I served as an associate.

3. During my employment at Kenyon, I was responsible for prosecuting patent applications primarily in the mechanical and electrical arts, including prosecuting patent applications for Toyota Jidosha Kabushiki Kaisha, the assignee of U.S. Patent Application Serial No. 08/750,641 ("641").

4. Exhibit 1 to this declaration is a copy of a letter I signed on November 18, 2003 which relates to an Information Disclosure Statement filed on the same date.

5. I am informed that Exhibit 2 to this declaration is a photocopy of a return date-stamped postcard received from the USPTO indicating the receipt of Exhibit 1 by the USPTO.

6. Exhibit 3 to this declaration is a copy of a letter I signed on September 9, 2004 which relates to an Information Disclosure Statement filed on the same date.

7. I am informed that Exhibit 4 to this declaration is a photocopy of a return date-stamped postcard received from the USPTO indicating the receipt of Exhibit 3 by the USPTO.

8. Exhibit 5 to this declaration is a copy of a letter I signed on September 15, 2004 which relates to a status inquiry (entitled "REQUEST FOR STATUS") filed on the same date.

9. I am informed that Exhibit 6 to this declaration is a photocopy of a return date-stamped postcard received from the USPTO indicating the receipt of Exhibit 5 by the USPTO.

10. At the time Exhibits 1, 3, and 5 were submitted to the USPTO, it is my understanding that my docket entry for this case read "PTO lost file-awaiting OA." As evidenced by my status inquiry letter of September 15, 2004 (Exh. 5), it was my belief that the USPTO had lost the paper file of '641, that we had submitted papers to the USPTO to reconstruct '641 on March 23, 2001, and that we had submitted an earlier status inquiry regarding '641 on September 8, 2003. At this point, and until being contacted by Kenyon for this declaration, it was my belief that the next action on this case would be taken by the USPTO, not by Kenyon.

11. During my employment at Kenyon, I do not know of a case where I filed an Information Disclosure Statement or a Status Inquiry in a case known to be abandoned.

12. During my employment at Kenyon, to my recollection, neither the USPTO nor anyone at Kenyon advised me that '641 had been abandoned.

13. During my employment at Kenyon, to my recollection, neither the client nor anyone at Kenyon requested me to allow '641 to become abandoned.

14. After leaving my employment at Kenyon, I have not been involved in prosecution of, or been provided information regarding '641 until being recently advised of the present Petition.

15. To the extent of my knowledge and belief, any delay in paying an issue fee for '641 from the due date of the issue fee until the filing of a grantable petition pursuant to 37 CFR 1.137(b) which occurred during my involvement with '641 was unintentional.

I declare that all of the above statements made based on my own knowledge are true and that all of the above statements that were made on information and belief are believed to be true, and further declare that these statements are made with the knowledge that knowing, willful and materially false statements, as are defined under Section 1001 of Title 18 of the United States Code, are punishable by fine, imprisonment, or both under Section 1001, and that such statements may affect the validity of the any patent issuing from '641 if the application is revived.

Dated: July 13, 2009

A handwritten signature in cursive script, appearing to read "William E. Curry".

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William E. Curry

# EXHIBIT 1 TO CURRY DECLARATION



3661  
#20/ISS  
PATENT 2/13/4  
Attorney Docket No. 77792/23

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

APPLICANT(s) : Koji SATO, et al.  
SERIAL NO. : 08/750,641  
FILED : December 1, 1995  
FOR : Schedule Setting and Processing System  
EXAMINER : O. Hernandez  
ART UNIT : 2316

## INFORMATION DISCLOSURE STATEMENT

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

RECEIVED  
NOV 24 2003  
GROUP 3600

Sir:

Pursuant to 37 CFR § 1.56, the attention of the Patent and Trademark Office is hereby directed to the reference(s) listed on the attached PTO-1449. Unless otherwise indicated herein, one copy of each reference is attached. It is respectfully requested that the information be expressly considered during the prosecution of this application, and that the reference(s) be made of record therein and appear among the "References Cited" on any patent to issue therefrom. The filing of this Information Disclosure Statement and the enclosed PTO Form No. 1449, shall not be construed as an admission that the information cited is prior art, or is considered to be material to patentability as defined in 37 C.F.R. § 1.56(b). It is believed that no fees are due, but

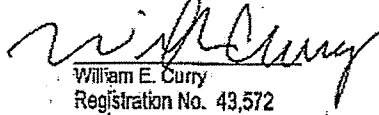


authorization is hereby given to charge any additional fees due, or to credit any overpayment, to deposit account 11-0600.

Respectfully submitted,

KENYON & KENYON

Date: Nov 18, 2003

  
William E. Curry  
Registration No. 43,572

Kenyon & Kenyon & Kenyon  
1500 K Street, N.W.  
Washington, D.C. 20005  
Telephone: (202) 220-4200  
Facsimile: (202) 220-4201

## EXHIBIT 2 TO CURRY DECLARATION

The stamp of the Patent Office hereon may be taken as acknowledging the receipt, on the date stamped, of:

INVENTOR(S): Koji SATO et al.  
SERIAL NO.: 08/750,641  
FILED: December 16, 1996  
TITLE: SCHEDULE SETTING AND PROCESSING SYSTEM  
GROUP ART: 2316  
EXAMINER: O. Hernandez

### PAPERS FILED:

1. Information Disclosure Statement (2 pp.)
2. 1449A/PTO - Info. Disclosure Statement by Applicant
3. Foreign Patent Document - CN 1090666A



WEC/rl

77792/23

November 18, 2003

# EXHIBIT 3 TO CURRY DECLARATION



PATENT

Docket No. 77792/23

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANTS : Koji SATO, et al.  
SERIAL NO. : 08/750,641  
FILED : 1 December 1995  
FOR : SCHEDULE SETTING AND PROCESSING SYSTEM  
GROUP ART UNIT : 2316  
EXAMINER : O. Hernandez

COMMISSIONER FOR PATENTS  
P. O. Box 1450  
Alexandria, Virginia 22313-1450

RECEIVED  
SEP 15 2004  
GROUP 3600

## INFORMATION DISCLOSURE STATEMENT UNDER 37 C.F.R. § 1.97 & § 1.98

SIR:

In conformance with Applicants' duty of disclosure under 37 C.F.R. § 1.56 and § 1.97(c)(1), the references listed on the attached form PTO-1449 are hereby brought to the Examiner's attention.

In compliance with 37 C.F.R. § 1.98, copies of the references are submitted herewith.

### Statement of Relevancy

The references were cited in the European Search Report of a related European Patent Application. A copy of the Search Report is enclosed.

### Statement Pursuant to 37 C.F.R. 1.97(b)(1)

The undersigned attorney hereby states that each item of information contained in this information disclosure statement was first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of the information disclosure statement.

It is respectfully requested that the information be expressly considered during the prosecution of this application, and that the references be made of record therein and appear in the "references cited" on any patent to issue therefrom.

Respectfully submitted,

Date: 9 September 2004



William E. Curry  
(Reg. No. 43,572)

KENYON & KENYON  
1500 K Street, N.W. Suite 700  
Washington, D.C. 20005

(202) 220-4200 Tel.  
(202) 220-4204 Fax

## EXHIBIT 4 TO CURRY DECLARATION

The stamp of the Patent Office hereon may be taken as acknowledging the receipt, on the date stamped, of

INVENTORS: Koji SATO, et al.  
SERIAL NO. : 08/750,641  
FILED : 1 December 1995



Enclosed: INFORMATION DISCLOSURE STATEMENT, FORM  
PTO-1449, SEVEN REFS., EP SEARCH REPORT

WEC/is

77792/23

09/09/04

## EXHIBIT 5 TO CURRY DECLARATION

PATENT  
Docket No. 77792/23

### IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventors : Koji SATO, et al.  
Serial No. : 08/750,641  
Filed : 16 December 1996  
For : SCHEDULE SETTING AND PROCESSING SYSTEM  
Group Art : 2316  
Examiner : O. Hernandez

COMMISSIONER FOR PATENTS  
P. O. Box 1450  
Alexandria, Virginia 22313-1450

### REQUEST FOR STATUS

S I R:


A request for continued prosecution with an Information Disclosure Statement was filed in this case on 15 March 2000. A preliminary amendment was faxed to the Examiner on 29 March 2000. A change of correspondence address was filed on 30 October 2000. Thereafter, a copy of the entire file was submitted for re-construction of the lost file on 23 March 2001. A status inquiry was filed on 8 September 2003. Information Disclosure Statements were filed on 18 November 2003 and 9 September 2004, respectively.

It is respectfully requested that the undersigned be informed when an Office Action or other communication from the Patent Office may be expected in this case.

Respectfully submitted,

KENYON & KENYON

Dated: 15 September 2004

  
William E. Curry  
(Reg. No. 43,572)

1500 K Street, N.W., Suite 700  
Washington, DC 20005  
Tel: (202) 220-4200  
Fax: (202) 220-4201  
505235

## EXHIBIT 6 TO CURRY DECLARATION

The stamp of the Patent Office hereon may be taken as acknowledging the receipt, on the date stamped, of

Inventor(s): Koji SATO, et al.  
Serial No.: 08/750,641  
Filed: 16 December 1996



Enclosed:

REQUEST FOR STATUS

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09/15/04